(22,457.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 836.

CATHERINE M. S. FROSCH, IDA S. MONDAY, EMMA A. SCHWAB, ET AL., APPELLANTS,

vs.

WILLIAM WALTER.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Page
Caption	*a*
Transcript from supreme court of the District of Columbia	1
Bill	1
"Complainants' Exhibit No. 1"—Deed in trust between John Walter, Senior, and Catherine, his wife, and John Walter, Junior	7
"Complainants' Exhibit No. 2"—Will of John Walter	13
"Complainants' Exhibit No. 3"—Order discharging John Walter, Jr., as trustee and appointing R. Ross Perry, Jr., as trustee	14
Decree in equity 9955	15
Decree in equity 19285	16
Decree in equity 9955	17
Answer of Oscar Walter *et al.*	18
Henry W. Sohon, trustee	21
William Walter	22

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 5, 1911.

Page

Joint and several answer of Ida S Monday and others 24
Joint answer of Henry C. and Frederick L. Walter 31
Testimony on behalf of complainant 33
Testimony of Thomas J. Owen 33
Direct examination 33
Cross-examination 35
Redirect examination 35
Testimony of Catharine M. S. Frosch 36
Direct examination 36
Cross-examination 40
Exhibit A. H. No. 1—Deed from Joseph Nathan to William Walter 42
No. 2—Deed from John W. Nairn to John Walter and William Walter 44
No. 3—Deed from John Walter, Sr., and wife to John Walter, Jr 46
No. 4—Quitclaim deed from John Walter, Jr., to William Walter 49
No. 5—Deed from John Walter, Senior, to Frederica Pauline Crow 50
No. 6—Deed from John Walter, Sr., to Lawrence Hugo Walter 53
No. 7—Deed from John Walter, Sr., to Carl Oscar Walter 54
No. 8—Deed from John Walter, Sr., to Adolph Walter 56
No. 9—Deed from William Walter to John Walter, Sr 58
Stipulations and record evidence on behalf of codefendants 60
Exhibit P. A. M. No. 1—Certificate of Paul A. Menzel, pastor, as to record of marriage 63
No. 2—Certificate of Paul A. Menzel, pastor, as to record of burial 63
No. 3—Certificate of Paul A. Menzel as to records of Concordia Lutheran Church of Washington city 63
Testimony for certain codefendants 64
Testimony of Pauline Crow 65
Direct examination 65
Cross-examination 67
Testimony of Henry W. Sohon 67
Direct examination 67
Opinion of Justice Barnard 68
Decree construing deed in trust 72
Appeal noted and allowed and penalty of appeal bond fixed 73
Memorandum: Appeal bond filed 73
Mandate from Court of Appeals 73
Decree on mandate 75
Bond on appeal 76
Designation of record 77
Clerk's certificate 78
Order dispensing with printing of record 78

Page

Cause submitted 79
Opinion in No. 2137 79
Opinion in No. 2002 79
Decree of the Court of Appeals 91
Petition for allowance of appeal to Supreme Court of the United States 91
Order allowing appeal and fixing amount of bond 93
Bond on appeal 93
Citation and service 95
Clerk's certificate 95

Transcript of Record.

Court of Appeals, District of Columbia, April Term, 1910.

No. 2137.

CATHERINE M. S. FROSCH, IDA S. MONDAY, EMMA A. SCHWAB et al., Appellants,

vs.

WILLIAM WALTER.

Appeal from the Supreme Court of the District of Columbia.

Filed March 18, 1910.

~~In the Court of Appeals of the District of Columbia.~~

~~No. 2002.~~

~~[illegible] et al., Appellants,~~

vs.

~~[illegible] et al.~~

a Supreme Court of the District of Columbia.

No. 27459. In Equity.

CATHARINE M. S. FROSCH, Complainant,

vs.

WILLIAM WALTER, OSCAR WALTER, ADOLPH WALTER, HUGO WALTER, Pauline Crow, Henry C. Walter, Frederick L. Walter, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, Mabel D. King, and Henry W. Sohon, Substituted Trustee, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill.*

Filed November 12, 1907.

In the Supreme Court of the District of Columbia.

No. 27459. In Equity.

CATHARINE M. S. FROSCH, Complainant,

vs.

WILLIAM WALTER, OSCAR WALTER, ADOLPH WALTER, HUGO WALTER, Pauline Crow, Henry C. Walter, Frederick L. Walter, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, Mabel D. King, and Henry W. Sohon, Substituted Trustee, Defendants.

To the Supreme Court of the District of Columbia holding an Equity Court:

Your complainant respectfully represents to the Court as follows:

1. That she is a citizen of the United States, a resident of the District of Columbia, of full age, is the wife of Frederick W. Frosch,

and brings this suit, in respect to her sole and separate estate, in her own right.

2. That the defendants William Walter, Oscar Walter, Adolph Walter, Hugo Walter, Pauline Crow, Henry C. Walter, Frederick L. Walter, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, Mabel D. King, are all citizens of the United States, residents of the District of Columbia, of full age, and are sued herein in their own rights, respectively; the defendant Henry W. Sohon is a citizen of the United States, a resident of the District of Columbia, of full age, and is sued herein as substituted trustee under a certain deed in trust made by John Walter, Senior, as will more fully appear hereinafter.

3. That heretofore, on, to wit, the 18th day of June, A. D. 1869, one John Walter, Senior, the father of the complainant, was seized and possessed in fee-simple, in addition to other real estate in the City of Washington, in the District of Columbia, of the lot numbered two (2) in the subdivision of lot numbered four (4), in square numbered two hundred and ninety-two (292), as laid off by Nicholas King, Surveyor; beginning for the same at the point in the line of Pennsylvania Avenue thirty-six (36) feet three (3) inches distant from the northwest corner of said square; and running thence southerly in a line perpendicular to the line of said Avenue forty-three (43) feet two and one-quarter (2¼) inches; thence running fifty (50) feet five and one-half (5½) inches to a line at right angles to the line of D Street; thence due east twenty (20) feet; thence due north in a line parallel to the second line thirty-six (36) feet five (5) inches, thence in a line and at right angles to the line of Pennsylvania Avenue forty-nine (49) feet nine and one-quarter (9¼) inches to the said Avenue; thence westerly twenty-three (23) feet seven (7) inches to the point of beginning containing 2,934 square feet, more or less, together with all and singular the improvements, privileges, hereditaments and appurtenances to the above described property, belonging or in any manner appertaining; and on said last mentioned date, the said John Walter, Senior, made and executed his certain deed in trust, which was duly recorded among the Land Records of the District of Columbia, on September 10th, A. D. 1872, in Liber No. 696 at folio No. 311 et seq., in which deed, his wife, Catharine, joined, conveying said property, together with other properties, to his son John Walter, Junior, in and upon certain trusts, as will more fully appear, reference being had to said deed in trust, and to a certified copy thereof attached hereto and marked "Complainant's Exhibit No. 1," and prayed to be read as a part hereof at any hearing of this cause.

4. That said John Walter, Senior, had theretofore intermarried with one Appolena Diengle, his first wife, and the issue of this marriage was as follows: to wit, (1) John Walter, Junior, who married Amelia Schafer, both of whom died in November, A. D. 1906, intestate, leaving two children surviving, the defendants Henry C. Walter and Frederick L. Walter; (2) William Walter, who married Amelia Bruhle, said William Walter being one of the defendants to this suit; (3) Barbara Walter, who married Albert King, who

died August 23, 1904, intestate, leaving eight children surviving, and being defendants herein, to wit, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, and Mabel D. King; (4) George N. Walter, (Who married Lizzie ——, From whom he was thereafter divorced), and who died May 14, A. D. 1892, intestate, and
4 without issue, and (5) the complainant Catharine M. S. Walter Frosch, who married Frederick Frosch, on March 9, 1907. John Walter, Senior also had four children by his first wife who died in infancy. The first wife of John Walter, Senior, died prior to 1869, and he afterwards intermarried with one Catharine Walter, who had by a previous husband the following three children, to wit, Kate Walter Berger, Mark Walter and Frank Walter. There was no issue of the second marriage; thereafter his second wife died, and thereafter he intermarried with one Wilhelmina Aufrecht, his third wife, who is now dead, and the issue of said third marriage was four children, to wit, the defendants Oscar Walter, Adolph Walter, Hugo Walter and Pauline Crow, and thereafter on, to wit, November 29, 1888, he intermarried with one Johanna or Anna Mygies, and no issue was born of this marriage. He thereafter on, to wit, February 7, 1898, obtained a decree of absolute divorce from his said fourth wife.

5. Thereafter, on, to wit, Apr. 12, 1907, John Walter, Senior, died, leaving a last will and testament, dated March 3, 1906, which has been duly admitted to probate and record in the Office of the Register of Wills for the District of Columbia, a certified copy of said last will and testament being attached hereto and marked "Complainant's Exhibit No. 2," and is asked to be read as a part hereof at any hearing of this cause.

6. That after executing said deed in trust, (a copy thereof being "Complainant's Exhibit No. 1"), said John Walter, Senior
5 filed his bill in Equity in this Court against John Walter, Junior, and others, being Equity Cause No. 6,093, asking for the removal of John Walter, Junior, as trustee, under said deed in trust, and by the decree passed in said Equity Cause R. Ross Perry Esq., was substituted in the place and stead of John Walter, Junior, trustee under said deed in trust; that thereafter the complainant Catharine M. S. Frosch, by the then name of Catharine M. S. Nauck, filed her Bill in Equity in this Court against said John Walter and others, being Equity Cause No. 9,955, and by decree passed therein March 5, 1887, Job Barnard was substituted in the place and stead of R. Ross Perry, as trustee of a certain fund of $10,000 mentioned in said deed in trust, the income derived therefrom to be for the benefit of the complainant in this cause during her natural life; that thereafter in the last mentioned suit, it appeared, by decree passed therein on the 14th day of May, 1901, that the defendant Henry W. Sohon, was substituted in the place and stead of Job Barnard, as trustee for said $10,000 fund.

Thereafter, R. Ross Perry, as substituted trustee, filed his certain Bill in Equity in this Court, against John Walter, Junior and others, being Equity Cause No. 19,265, requesting the Court to relieve him as substituted trustee under said deed in trust, and said defendant

Henry W. Sohon, was substituted in the place and stead of R. Ross Perry, by decree passed therein May 10, 1898, and said Henry W. Sohon has duly qualified as such substituted trustee both for said $10,000 fund and as trustee in the place and stead of R. Ross Perry, under the said deed in trust, by giving bond fixed by the
6 Court in said equity suits, reference being had to the said three equity suits for a more complete description of the said substitutions of trustees, as aforesaid. Complainant files certified copies of said decrees passed in the above entitled equity suits attached hereto and marked "Complainant's Exhibit No. 3," and is asked to be read as a part hereof at any hearing of this cause.

7. The complainant avers that her father John Walter, Senior, executed said deed in trust, a copy of same being "Complainant's Exhibit No. 1," after the death of his first wife and after he had married his second wife Catharine and that his intention and desire was thereby expressed to make provision for the three children of his first wife, Appolena, to wit, the complainant Catharine M. S. Frosch, Barbara Walter King and George N. Walter, the said John Walter, Senior, having theretofore made provision for his son William Walter by deed to William Walter and John Walter, Junior, from I. W. Nairn, dated November 16, 1867, and the said John Walter Senior, by another deed of even date with said deed in trust having provided for his son John Walter, Junior, so that the said deed in trust was made and executed expressly to provide for his three children, to wit, the complainant Catharine M. S. Frosch, Barbara Walter King and George N. Walter, as aforesaid.

The first paragraph of said deed in trust reads, in part, as follows:

"And Whereas said party of the first part from considerations of blood and natural affection is desirous of making provision for his children by his first wife to wit: Catharine Magdalena Sophia Walter, George N. Walter, and Mrs. Barbara King."

so that the intent and purpose of said deed in trust was pri-
7 marily and expressly for the benefit of his said three children; after making provision in said deed for the complainant and said Mrs. Barabara King, he makes the following provision for his son George N. Walter, and conveys in trust the hereinbefore described property by said deed in trust, the trust declared being as follows:

"In Trust to pay over to the before mentioned George N. Walter the youngest son of the said John Walter Senior, the rents issues and profits of the said property for and during the term of his natural life and from and after his decease, to hold the said property for the use of all and every the children of said George N. Walter in fee and their heirs forever. And it is hereby further Witnesseth that in the event of the death of any one of the above mentioned children of the said John Walter Senior, to wit: Catharine, George & Barbara, without leaving any child or children or any issue of any child or children, then and in that case that the property held in trust by said Trustee party of the second part for the benefit of the party then dying without issue shall be sold by said party of the second part,

after the death of John Walter, Senior, and the proceeds paid over in equal portions to the surviving children of the said John Walter, Senior, party of the first part."

8. Complainant further states that her said brother George N. Walter, died, intestate and without issue, on May 14, 1892; that her sister Barbara King, died August 23, 1904, and that her brother John Walter, Junior, died November 17th, 1906, and that her father John Walter, Senior, thereafter died April 12, 1907; that said John Walter, Senior, had reserved to himself a life estate in and to the various properties described in said deed in trust so that the trustee under said deed in trust had merely a naked legal title to the aforesaid described property until the death of said John Walter, Senior, without any active trust, but since the death of said
8 John Walter, Senior, the said Henry W. Sohon, as substituted trustee under said deed in trust, has taken possession of the aforesaid described property and is attempting to perform and carry out the trusts reposed in him as such substituted trustee under the provisions of said deed in trust.

That among said trusts reposed in said trustee was the following, to wit, to pay out of the rents and profits of the real estate conveyed in said trust, the sum of two thousand dollars ($2,000) to the children of his second wife Catharine, in equal shares, within one year after the decease of said John Walter, Senior. The said sum was to be made to his wife provided she outlived the said John Walter, Senior, but she having predeceased him, the payments are to be made directly to her said children.

9. Complainant further avers that it was the intention of her father, John Walter, Senior, to provide exclusively in said deed in trust for his said three children by his first wife; that in respect to the provision made for his son George N. Walter, if he should die without issue the proceeds of sale from the hereinbefore described property should be paid over in equal proportions to the surviving children of said John Walter, Senior, your complainant is advised by counsel, and therefore avers, that said provision for the payment of the proceeds of sale in equal proportions to the surviving children of John Walter, Senior, refers exclusively to the said three children by his first wife, to wit, Catharine, Barbara and George, and not his said two sons John and William as the deed expresses that they had been amply provided for otherwise, and also not to any other
9 children thereafter born to him, although there may be some doubt as to the language used in said deed in trust conveying such intention, but complainant avers that such is the proper construction of the said deed in trust, and that she, being the survivor of said three children is the sole owner in equity of the hereinbefore described property and is entitled to all of the proceeds of sale therefrom, and she elects if this construction is sustained by the Court to have a decree passed directing the defendant Henry W. Sohon, as substituted trustee, to convey the said property to the complainant in fee-simple. In the construction of said deed by the Court if it should be so decided that her brother William Walter owns a one-half of the equitable right, title and interest in said property, although such

construction is, as complainant avers, contrary to the intention of her father, the complainant avers that the said property should be sold by the said trustee and the proceeds divided equally between herself and her said brother William Walter.

Wherefore the premises considered, your complainant prays:

1. That the Writ of Subpœna may issue out of this Honorable Court directed to the defendants William Walter, Oscar Walter, Adolph Walter, Hugo Walter, Pauline Crow, Henry C. Walter, Frederick L. Walter, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, Mabel D. King and Henry W. Sohon, Trustee, requiring them, and each of them, to appear herein and answer the exigencies of this Bill of Complaint, answer under oath being expressly
10 waived.

2. That, if the Court should be of the opinion, in the construction of said deed in trust, that the complainant is entitled to all of the proceeds of sale of the hereinbefore described property, the decree of this Court may be passed directing the said Henry W. Sohon, as substituted trustee under said deed in trust, to convey by good and sufficient deed in fee-simple, the said property to your complainant, after the said charge of two thousand dollars ($2,000) has been completely paid by said trustee to the children of Catharine, the second wife of said John Walter, Senior.

3. That, if the Court should be of the opinion, that the said complainant and her brother William Walter are entitled in equal shares to the proceeds of sale of the hereinbefore described property, that the said substituted trustee shall be directed by decree of this Court to sell the said property, and, after paying the expenses and costs of said sale, to divide the proceeds equally between the complainant and her said brother William Walter, after the said charge of two thousand dollars ($2,000) has been paid etc.

4. That said defendant Henry W. Sohon, as substituted trustee, may be required to state his accounts as such herein.

5. And that your complainant may have such other and further relief in the premises as the nature of the case may require.

The defendants to this bill are, William Walter, Oscar Wal-
11 ter, Adolph Walter, Hugo Walter, Pauline Crow, Henry C. Walter, Frederick L. Walter, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, Mabel D. King and Henry W. Sohon, Trustee.

CATHERINE M. S. FROSCH.

BARNARD & JOHNSON,
Solicitors for Complainant.

DISTRICT OF COLUMBIA, *To wit*:

I, Catharine M. S. Frosch, being first duly sworn, on oath state that I have read the foregoing Bill of Complaint by me subscribed, and that I know the contents thereof; that the facts therein stated of my own knowledge are true, and the facts therein stated upon information and belief, I believe to be true.

CATHERINE M. S. FROSCH.

Subscribed and sworn to before me this 6th day of November, A. D. 1907.

[SEAL.] WM. H. HOLLOWAY,
Notary Public, D. C.

"COMPLAINANT'S EXHIBIT No. 1."

Liber 696, Folio 311 et seq.

Recorded September 10-1872, 3 P. M.

Trust.

John Walter, Sr., et ux.
to
John Walter, Jr.

This Indenture Made this the Eighteenth day of June in the year of our Lord Eighteen hundred and sixty nine by and between John Walter, Senior, and Catharine his wife, of the City of
12 Washington, and District of Columbia of the first part, and John Walter, Junior, of the same place of the second part: Witnesseth: Whereas the said John Walter Senior of the first part is the owner of certain Real Estate in the City of Washington, and certain credits some of which are secured by deed of trust on real estate in said City. And Whereas said party of the first part from considerations of blood and natural affection is desirous of making provision for his children by his first wife to wit: Catharine Magdalena Sophia Walter, George N. Walter, and Mrs. Barbara King. Now, Therefore, this Indenture Witnesseth, that the said party of the first part in consideration of the premises and of the sum of One dollar, to him in hand paid by the said party of the second part at and before the sealing of these presents, the receipt whereof is hereby acknowledged, has given, granted, bargained, aliened, enfeoffed, conveyed and confirmed and by these presents doth give, grant, bargain & sell, alien, enfeoff, convey and confirm unto him the said John Walter, Junior, party of the second part, his heirs and assigns forever. All the following named pieces of property, to wit: first, Lot number three (3) in square number three hundred and forty-seven (347) beginning at the Southwest corner of said Lot number three (3) and running thence on E Street North, Twenty (20) feet, thence North One hundred feet (100 ft.) thence West Twenty (20) feet, thence South One hundred (100) feet to the place of beginning, also second, a certain parcel of Land known and described as all that certain part of Lots numbered five (5) and Six (6) in Square numbered three hundred and twenty-three (323),
Beginning at a point in the line of Twelfth (12th) Street
13 West, forty (40) feet Eleven and one-half (11½) inches, South from the Northwest corner of said Lot Six (6) and running thence East at right angles to the said Street Ninety-five (95) feet, One (1) inch to the line of an Alley, thence in a

southerly direction along the line of said alley, across said Lots Six (6) and five (5) to a point ten (10) feet West from the Southeast corner of said Lot five (5), thence West partly with line of Lot five (5) to Twelfth (12th) Street, Ninety (90) feet One (1) inch, thence North with the line of said Street forty (40) feet, Eleven and one-half (11½) inches to the place of beginning, containing three thousand eight hundred and thirty-three (3833) feet nine (9) inches of ground, being the same piece or parcel of Land conveyed by James W. Barker and wife to Joseph Nathan, November fifth Eighteen hundred and sixty-three, also third, that certain piece or parcel of Land known as part of Lot number Eleven (11) in square two hundred and ninety-three (293), Beginning at the Northwest corner of said Lot and running thence East, along the line of North D Street Twenty (20) feet, thence South Sixty (60) feet, thence West twenty (20) feet to Thirteenth Street West, thence North along the line of Thirteenth Street West, Sixty (60) feet to the place of beginning, also fourth all that piece or parcel of Land lying and being in Washington City in the District of Columbia, which is known and described as Lot numbered two (2) in the Subdivision of Lot numbered four in square numbered two hundred and ninety-two in the said City, as laid off by Nicholas King Surveyor, beginning
for the same at a point in the line of Pennsylvania Avenue
14 thirty-six (36) feet three (3) inches distant from the Northwest corner of said square and running thence Southwardly in a line perpendicular to the line of said Avenue forty-three (43) feet, two and one-fourth (2¼) inches, thence run-ing fifty (50) feet, five and one-half (5½) inches in a line at right angles to the line of D Street, thence due East twenty (20) feet, thence due North in a line parallel to the second line thirty-six (36) feet five (5) inches, thence in a line at right angles to the line of Pennsylvania Avenue forty-nine (49) feet Nine and one-fourth (9¼) inches to the said Avenue, thence Westwardly twenty-three (23) feet seven (7) inches to the point of beginning, containing two thousand nine hundred and thirty-four (2934) square feet of ground more or less, together with all and singular the improvements, privileges, hereditaments and appurtenances to the same above described pieces of property belonging or in any manner appertaining. To Have and to Hold the same unto and to the use of the said John Walter, Junior, party of the second part, his heirs and assigns forever. In Trust nevertheless for the uses and purposes following & none others, that is to say, first that the said party of the second part shall pay over all the rents, issues and profits of the above described pieces of property, to the said John Walter, Senior, party of the first part for and during the term of his natural life. And in case the said John Walter, Senior shall die before the completion of the improvements, now being made, on the pieces of property situated in Washington City on F Street, between Tenth and Eleventh Streets West,
which property has been made over by deed of even date
15 herewith to John Walter, Junior, by the said John Walter, Senior, his father, as a provision for the said John Walter, Junior, then on the further Trust that said party of the second part

shall in a reasonable time after the decease of the said John Walter, Senior, raise from the rents, issues and profits of the hereinbefore described pieces of property a sum of money equal to three-fourths (¾) of the amount that shall be necessary to complete the improvements on the said property on F Street in a manner now contemplated to complete said improvements which sum shall be applied to that purpose by said party of the second part, provisions having been otherwise made for raising the other one-fourth (¼) of the amount necessary to complete said improvements, in that event, from the rents & profits of the Estate deeded to William Walter and John Walter, Junior, by I. W. Nairn by deed bearing date November 18, 1867, as a provision for said William Walter. And Secondly, that the said party of the second part shall pay out of the rents issues and profits of the above described pieces of property within One year after the demise of the said party of the first part, the sum of two thousand dollars to his present wife Catharine Walter, if she survives the said John Walter Senior, party of the first part, for the use of her children by her first husband, and if she does not survive, the said party, then the said two thousand dollars shall be paid to and be divided equally between her said children. And on the further Trusts, that from and after the decease of the said John Walter, Senior, the said John Walter, Junior, party of the second part, Trustee shall hold the first piece or parcel of land here-
16 inbefore described as Lot number three (3) in square number three hundred and forty-seven (347), Beginning at the Southwest corner of said lot, and run-ing thence &c., as before described to the beginning, together with all and singular the appurtenances &c., thereunto belonging. In Trust to pay over to Catharine Magdalene Sophia Walter, youngest daughter of said John Walter, Senior, the rents, issues and profits of the same for and during the term of her natural life, and from and after her decease, to hold the same property for the use of all and every the children of said Catharine Magdalene Sophia in fee and their heirs forever. And Whereas, the said John Walter, Senior party of the first part holds the bond of John Walter, Junior, for Ten thousand dollars ($10000.) bearing even date herewith which said bond was given as a part consideration for certain property located on F Street North between Tenth and Eleventh Streets West, conveyed to the said John Walter Junior, by the said party of the first part by deed bearing even date herewith, now in order to equalize the division of my property between my said children I hereby assign transfer and set over, the said bond to the said John Walter, Junior, in trust as aforesaid and direct the said party of the second part Trustee aforesaid to pay the interest on said bond to John Walter, Senior, during his natural life, and on the decease of said John Walter senior party of the first part, to invest the said Ten thousand dollars in other property to be selected by the said Catharine Magdalena Sophia Walter, with the approval of said Trustee and to hold such property on like Trust, for the said Catharine Magdalena to wit: to pay over the rents, issues and profits of said property to her for and dur-
17 ing her natural life, and after her decease to hold the same for the use of all and every her children in fee and their

heirs forever. And in Trust that the said party of the second part shall from and after the decease of the said John Walter, Senior, hold the following property to wit: the second parcel of land hereinbefore described as that certain part of lots numbered five (5) and six (6) in square numbered three hundred and twenty-three (323) beginning at a point in the line of Twelfth street West, forty (40) feet, Eleven and one-half (11½) inches South from the Northeast corner of said Lot six (6) and running thence East &c., as hereinbefore described to the place of beginning, also the third piece or parcel of Land hereinbefore described as that certain piece or parcel of Land known as part of Lot number Eleven (11) in square two hundred ninety-three (293) Beginning at the Northwest corner of said Lot and running thence East along the line of North D Street, twenty (20) feet thence &c., as hereinbefore described to the place of beginning. Together with all and singular the appurtenances &c., thereunto belonging, In Trust to pay over to Mrs. Barbara King oldest daughter of the said John Walter, Senior, after the decease of said John Walter, Senior, all the rents issues and profits of the same for and during the term of her natural life & from and after her decease, to hold the same two pieces of property for the use of all and every, the children of said Barbara King in fee and their heirs forever. And Whereas, the said John Walter, Senior now holds the notes of Elizabeth Golding of Washington City,
18 principal and interest amounting to about Seven thousand three hundred dollars ($7300) being the consideration money and interest now due from her, for the purchase of Real Estate from the said John Walter, Senior, which notes for said amount are secured by deed of trust on the following property to wit: All that certain piece or parcel of ground lying & being in the City of Washington known as part of Lot four (4) in square two hundred and ninety-two (292) described as follows: Beginning for the same at a point on D Street North twenty (20) feet from the Southwest corner of said square, running thence East along the line of said D Street North twenty (20) feet, thence North forty-eight (48) feet, thence West twenty (20) feet, thence South forty-eight (48) feet to the place of beginning, and which deed of trust is now in the possession of the said John Walter, Senior, Now, This Indenture Witnesseth that the said John Walter Senior of the first part, in order more fully to equalize the division of his property, among his children, hereby assigns & transfers said notes for about $7300 and the Deed securing their payment to John Walter, Junior, in Trust, that he shall have said property sold under said Deed of Trust, at as early a day as possible, for the payment of said indebtedness of the said Elizabeth Golding, and that if on the sale of said property there shall be no bid on it, for an amount sufficient to pay off said debt of said Elizabeth Golding with interest, then the party of the second part shall in that case buy in said property at the sale, but if there shall be a bid on it for an amount sufficient to pay off said indebtedness, then he shall in a reasonable time invest the
19 amount of the debt thus realized in real estate, to be selected by the said Barbara, with the approval of said John Walter,

Junior, Trustee, and that the said John Walter, Junior of the second part shall hold the real estate which he shall purchase with the money realized from said debt by said sale, on the said property bought in at the sale to secure said debt, In Trust for the following purposes, and uses to wit: to pay over the rents and profits and issues of the same to John Walter, Senior for and during his natural life, and after his decease, to pay over the rents, issues and profits of the same to Mrs. Barbara King aforesaid for and during her natural life & from and after her decease to hold the same for the use of all & every the children of the said Barbara King in fee and their heirs forever. And in Trust, that the said party of the second part shall from and after the decease of the said John Walter, Senior, hold the following property to wit: the fourth parcel of Land hereinbefore described as all that piece or parcel of land lying and being in Washington City in the District of Columbia, which is known and described as Lot numbered two (2) in the Subdivision of lot numbered four (4) in square numbered two hundred and ninety-two in the said City, as laid off by Nicholas King Surveyor, Beginning for the same at a point in the line of Pennsylvania Avenue, thirty-six (36) feet three (3) inches distant from the Northwest corner of said square, and running thence Southwardly in a line perpendicular to the line of said Avenue forty-three (43) feet, two and one-fourth (2¼) inches, thence &c., as hereinbefore described to the place of beginning, together with all and singular the appurtenances,
20 thereunto belonging. In Trust to pay over to the before mentioned George N. Walter the youngest son of the said John Walter Senior, the rents issues and profits of the said property for and during the term of his natural life and from and after his decease, to hold the said property for the use of all and every the children of said George N. Walter in fee and their heirs forever. And it is hereby further Witnesseth that in the event of the death of any one of the above mentioned children of the said John Walter Senior, to wit: Catharine, George & Barbara, without leaving any child or children or any issue of any child or children, then and in that case that the property held in trust by said Trustee party of the second part for the benefit of the party then dying without issue shall be sold by said party of the second part, after the death of John Walter, Senior, and the proceeds paid over in equal portions to the surviving children of the said John Walter, Senior, party of the first part. And for a further condition to the above described Trusts, the said John Walter, Junior party of the second part shall have the power to sell all or any of said property therein above described, and on receipt of the consideration money, execute conveyances for the same and to reinvest the money therefor in other real estate or stocks or bonds at the request of the respective parties entitled to the benefit of said Trusts, Subject ho-ever to the approval of the said Trustee, and from time to time, to sell and invest and reinvest said funds as may appear for the best interest of the said parties, and to make all necessary repairs to said property, and deduct the same from the rents issues and profits of the same.
21 And the party of the second part Trustee as aforesaid may collect the rents issues and profits of said Trust property in

person, or he may appoint any one else to do so, and he is hereby authorized to charge five per centum and not more than five per centum on the amount collected for his or his said agent's commission for said services. And the said Trustee shall upon the demise of the party of the first part open an account with each piece of property herein conveyed, in trust as above described in which he shall keep a regular and true account of all expenses of repairs, taxes and charges and of all rents issues and profits of the said property, and said account shall be subject to the inspection of the said parties, and shall be settled up, and closed at the end of each and every year, and the said Trustee shall then take a final receipt for the sum or sums paid to the said parties which shall be his acquittance. And this Indenture further Witnesses that the said John Walter, Junior, party of the second part in consideration of the premises hereby accepts the aforesaid Trusts in the terms herein declared. In testimony Whereof, the said parties of the first and second parts have hereunto set their hand and seal on the day and year first hereinbefore written.

JOHN WALTER. [SEAL.]
CATHARINE WALTER. [SEAL.]
JOHN WALTER, JR. [SEAL.]

Signed, sealed and delivered in the presence of
M. H. N. KENDIG.
GEO. TAYLOR.

22 DISTRICT OF COLUMBIA.
County of Washington, ss:

I, M. H. N. Kendig a Notary Public in and for the district aforesaid, in the said County do hereby certify that John Walter and Catharine his wife, and John Walter Jr. parties to a certain deed bearing date on the Eighteenth day of June A. D. 1869, and hereto annexed, personally appeared before me in the County aforesaid the said John Walter and Catharine Walter his wife, and John Walter, Jr., being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed. And the said Catharine Walter being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly, signed, sealed and delivered the same and that she wished not to retract it. Given under my hand and official seal this Eighteenth day of June A. D. 1869.

[NOTARIAL SEAL.] M. H. N. KENDIG,
Notary Public.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 696, folio 311 et seq., one of the Land Records of the District of Columbia.

23 In Testimony Whereof, I have hereunto set my hand and affixed the seal of this office this 17th day of July, A. D. 1907.

[SEAL.] JNO. C. DANCY,
Recorder of Deeds, Dist. of Col.

"COMPLAINANT'S EXHIBIT No. 2."

I, John Walter, cabiner maker, residing at 1011 E Street, Northwest, Washington, D. C., being of sound and disposing mind, memory and understanding, do hereby make, publish and declare this to be my last will and testament and hereby revoke all other wills and testaments made by me.

First: I give and bequeath to my son Hugo Walter all my tools for cabinet making and other purposes and request that he give his brothers such of said tools as he may not need or desire.

Second: I give and bequeath to my daughters Catherine M. S. Nauck and Pauline Crow all my household effects and furniture to be equally divided by them.

Third: I give and bequeath to The German Orphan Asylum, Anacostia, D. C., the sum of Two hundred dollars ($200.00).

Fourth: I direct that all the rest and residue of my estate, real and personal, be converted into money by my executor hereinafter named and that the money realized be divided between my children John Walter, William Walter, Catherine M. S. Nauck, Oscar Walter, Adolph Walter, Hugo Walter and Pauline Crow and the
24 children of my deceased daughter Barbara King; said grandchildren to receive and divide between them an amount equal to that received by each of my said children.

Lastly: I nominate and appoint Henry W. Sohon the executor of this last will and testament.

In testimony whereof I subscribe my name and affix my seal hereto on this 3rd day of March, 1906.

JOHN WALTER. [SEAL.]

The foregoing writing was signed, sealed, published and declared by said John Walter as and for his last will and testament in the presence of us, who at his request, in his presence and in the presence of each other subscribed our names as witnesses thereto on this 3rd day of March, 1906.

HENRY A. STREITBERGER.
WILLIAM BRODT.

Supreme Court of the District of Columbia, Holding Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify, that the foregoing is a true copy of the original will of John Walter deceased, filed and recorded in the office of the Register of Wills for the District of

Columbia, Clerk of the Probate Court, aforesaid; and that
25 the said will, after having been duly proven, was, by order of the said Court, in accordance with the laws of the District of Columbia, admitted to probate and record on the 29th day of April, A. D. one thousand nine hundred and seven.

I further certify, that said will was duly executed and proved agreeably to the laws and usages of the District of Columbia, and that I have compared the foregoing copy of said will, with the original record in said office, and find it to be a full, true and correct transcript thereof.

Witness my hand and the seal of the said Probate Court, this 8th day of November, A. D. 1907.

[SEAL.] JAMES TANNER,
Register of Wills for the District of Columbia,
Clerk of the Probate Court.

"COMPLAINANT'S EXHIBIT No. 3."

Filed May 11, 1878. R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia.

6093, Eq. Doc. 18.

JOHN WALTER, SR., et al.
vs.
JOHN WALTER, JR., Trustee.

This cause coming on for hearing, and the stipulation of the parties agreeing to the appointment of another trustee, being read:
it is ordered, adjudged and decreed that the defendant John
26 Walter Jr. be discharged from the trusts named in the deed of trust executed on the 18th day of June 1869, and made a part of the Complainants' Bill herein; and that the estate, vested in him as trustee under said deed be divested out of him and his heirs and assigns; and be vested in R. Ross Perry Esq. who is hereby appointed Trustee under said deed of Trust, to have and to hold the property mentioned in said Deed upon the trusts and for the purposes mentioned in said Deed, provided however that the said John Walter Sr., be allowed to collect all the rents, issues and profits of the Trust property, during his life; and that at all times he shall keep the trust property insured against fire, and pay all taxes, assessments &c. levied upon said trust property, out of said rents.

That the said R. Ross Perry Esq. is not to be held liable for any of the rents issues or profits of said trust property until after the death of the said John Walter Senior, and the said trust property is properly and fully received by the said R. Ross Perry.

That the said John Walter Jr. shall turn over to the said R. Ross Perry all Deeds, and papers belonging to or referring to said trust property.

And it is further ordered that this case be dismissed without costs to either party.

By the Court:

MACARTHUR, *Justice.*

May 11, 1878.

A True Copy.
Test:
[SEAL.[J. R. YOUNG, *Clerk,*
By F. E. CUNNINGHAM, *Ass't Clerk.*

27 Filed March 5, 1887. R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia.

No. 9955. Equity.

CATHARINE M. S. NAUCK
vs.
JOHN WALTER et al.

Now come the parties, the complainant and defendant John Walter, Jr., by their solicitors, and the defendant, John Walter, Senior, in proper person: And this cause coming on for hearing upon the pleadings and being heard and considered. It is this fifth day of March, 1887, ordered, adjudged, and decreed that the defendant John Walter, Jr., be and he is hereby decreed to pay to Job Barnard, as trustee, the sum of Ten thousand Dollars ($10,000), such payment to be made within sixty (60) days from this date; and that on payment of the said sum the defendant, R. Ross Perry, trustee, is authorized and directed to release the real estate described in the bill from the deed of trust recorded in Liber 896, folio 151, one of the Land Records of the District of Columbia, being the same referred to in Paragraph six (6) of the bill. And it is further decreed that on receipt of the said Ten thousand Dollars ($10,000) by said Job Barnard, as trustee, the same shall be by him invested on good real estate security, to the best advantage, within the District of Columbia, and held and retained by him in tact, as such trustee, so that the plaintiff shall have and receive the interest and income to arise therefrom during the term of her natural life, and at
28 her decease that the same may be paid over, delivered and transferred to her children in fee, in accordance with the terms of the trust declared in the deed of trust executed by the defendant John Walter, Sr., and recorded in Liber 696 folio 311, et seq., another of the Land Records of said District, the said Job Barnard being hereby duly appointed and substituted as trustee in place of the said John Walter, Jr., in said trust, so far as relates to the said Ten thousand Dollars ($10,000), the said R. Ross Perry having declined to longer serve as trustee in relation thereto under the appointment heretofore made.

And on the payment of the said Ten thousand Dollars and execution of a deed of release as aforesaid, the said John Walter, Jr., and

the said property, are discharged and freed from all further trust and obligation on account of the said bond for Ten thousand Dollars, and the said deed of trust referred to in the bill; and said John Walter, Jr., is also discharged and released from any obligation on account of any rents and profits heretofore received, or accrued on account of said property, or hereafter to be received or to accrue on account thereof, to all persons whomsoever.

And before the said Job Barnard, hereby appointed trustee in relation to the fund as aforesaid, shall receive the same, or enter upon his duties as such, he shall give a bond in this cause, to the United States, in the penalty of Twenty thousand Dollars, with surety or sureties to be approved by the Court, conditioned for the faithful discharge of the duties of said trust, as required by the rules and practice of this Court.

29 And it is further decreed, that on the payment by said defendant, John Walter, Jr., of said sum of ten thousand dollars as aforesaid, and the execution and delivery of the said deed of release by said R. Ross Perry, trustee, as aforesaid, said Perry shall be and is hereby discharged from all further liability relating to that portion of the said trust.

WM. W. MERRICK, *A. J.*

A True Copy.
Test:
[SEAL.] J. R. YOUNG, *Clerk*,
By F. E. CUNNINGHAM,
Ass't Clerk.

Filed May 10, 1898. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

Equity. No. 19265.

R. Ross Perry, Trustee,
vs.
John Walter et al.

This cause standing ready for hearing and being submitted without argument the proceedings were read and considered. It is thereupon this 10th day of May 1898, adjudged ordered and decreed that R. Ross Perry be and he hereby is, pursuant to his own request relieved and discharged from the trusts declared in the deed dated June 18, 1869, and the deed dated October 22, 1878, and the decree of this court dated May 11, 1878 mentioned in the bill of complaint in this cause and that the estate vested in said R. Ross Perry

30 by said deeds and said decree be divested out of him and be vested in Henry W. Sohon upon the trusts mentioned in said deeds, provided however that John Walter senior be allowed to collect the rents and profits of the real estate subject to said trusts during his life he keeping said real estate insured against loss by fire and paying all taxes and assessments levied upon said real estate

and said Henry W. Sohon being hereby exempted and exonerated from liability with respect to said real estate until the same be received by him after the death of said John Walter.

It is further ordered that this cause be referred to the Auditor of this Court to state the account of said R. Ross Perry as trustee as aforesaid and that upon the final ratification of the report of the Auditor thereof and the filing by said Henry W. Sohon of his bond to the United States of America, with surety to be approved by the Court in the penal sum of forty thousand dollars conditioned for the faithful performance of his duties under this and any further order in this cause said R. Ross Perry shall pay and deliver to said Henry W. Sohon as trustee as aforesaid all money and obligations, deeds and papers in his hands as trustee as aforesaid and report such payment and delivery to this court with the receipt of said Henry W. Sohon which shall stand as the acquittance of said R. Ross Perry.

It is further ordered that said Henry W. Sohon shall pay to said John Walter senior the income from the money and obligations so to be delivered to him during the life of said John Walter less the commission of ten per centum thereof to be retained by
31 said Henry W. Sohon as his compensation.

It is further ordered that this cause be retained for the administration of said trust and the further direction of said Henry W. Sohon trustee.

W. S. COX, *J.*

A True Copy.
Test:
J. R. YOUNG, *Clerk.*
By F. E. CUNNINGHAM,
[SEAL.] *Ass't Clerk.*

Filed May 14, 1901. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

No. 9955. In Equity.

CATHERINE M. S. NAUCK, Complainant,
vs.
JOHN WALTER, JR., et al., Defendants.

Upon hearing the petition of Job Barnard, trustee, filed herein on the 10th day of May, A. D. 1901, and the separate answers thereto of Catherine M. S. Nauck and Minnie Louise Nauck, and the answers of the infants, Arthur Adolph Nauck, Charles George Nauck and Ernest Emile Nauck, by their Guardian ad Litem, Catherine M. S. Nauck and after being considered by the Court:

It is, By the Court this 14th day of May A. D. 1901, adjudged, ordered and decreed that Job Barnard, trustee pay over the sum of Ten thousand dollars ($10,000) to Henry W. Sohon, as a
32 new trustee to act in the place and stead of the said Job Barnard; and it is further adjudged, ordered and decreed that

the said Henry W. Sohon shall invest the said Ten thousand dollars ($10,000) on first deed of trust or mortgage on good real estate security situate in the District of Columbia or as the court may direct and the same is to be held in tact so that Catherine M. S. Nauck, shall have and receive the interest and income to arise therefrom during the term of her natural life, and at her death, that the same may be paid over, delivered and transferred to her children in fee, in accordance with the terms of the trust declared in the deed of trust executed by John Walter Senior and recorded among the Land Records of the District of Columbia in Liber 696, at folio 311 et seq.; the said Henry W. Sohon is hereby duly appointed and substituted as trustee in the place and stead of Job Barnard and to execute all the trusts and perform all the duties imposed upon the said Job Barnard by the decree heretofore passed in this cause on the 5th day of March, A. D. 1887, the said Job Barnard having declined to longer serve as such trustee and having asked the Court to relieve him of the trust; the said Henry W. Sohon must give a bond for the faithful performance of his duties as such trustee in the full sum of Twenty thousand dollars ($20,000), with good and sufficient surety to be approved by this Court, and on the payment of the said Ten thousand dollars ($10,000) by said Job Barnard, trustee to said Henry W. Sohon, trustee, said Job Barnard shall be and he is hereby discharged and relieved from all liability in connection with the said trust.

A. C. BRADLEY, *Justice.*

A True Copy.
Test:
[SEAL.] J. R. YOUNG, *Clerk.*
By F. E. CUNNINGHAM, *Ass't Clerk.*

33 *Answer of Oscar Walter, Adolph Walter, Hugo Walter, and Pauline Crow.*

Filed January 18, 1908.

In the Supreme Court of the District of Columbia.

Equity No. 27459.

CATHERINE M. S. FROSCH
vs.
WILLIAM WALTER et al.

For answer to the bill of complaint filed in the above-entitled cause, the defendants, Oscar Walter, Adolph Walter, Hugo Walter and Pauline Crow, respectfully state to the Court as follows:

1. They admit the allegations of the first paragraph of the bill of complaint.

2. They believe the matters and things stated in the second paragraph of the bill of complaint to be true.

3. They admit that on the 18th day of June, A. D. 1869, John

Walter, Sr., the father of these defendants, and also father of the complainant, owned the real estate described in the third paragraph of the bill, but as the ownership of said property and the accuracy of the description thereof are all matters of record, they demand proof thereof by the record. They also admit that the said John Walter, Sr., made and executed the deed referred to in the latter part of said paragraph, but demand proof of said deed by the production of the original deed, or a recorded copy of same
34 for greater certainty of proof.

4. They admit that John Walter, Sr., had, by his first wife, five children, namely, John Walter, Jr., William Walter, Barbara Walter, who afterwards married Albert King, George N. Walter, and the complainant, Catherine M. S. Frosch. They admit that John Walter, Jr., and his wife, Amelia, both died intestate, leaving surviving them two children, namely, the defendants, Henry C. Walter and Frederick L. Walter. They admit that William Walter, the second of said children, is still living, and is one of the parties to this suit. They admit that Barbara Walter King died in August, 1904, intestate, leaving eight children surviving her, namely, the defendants, Ida S. Monday, Emma A. Schwab, William A. King, J. Walter King, Margaret Collins, Caroline King, Eva A. King and Mabel D. King. They admit that George N. Walter died intestate in 1892, leaving no issue surviving him. They admit that the first wife of said John Walter, Sr., died prior to 1869, and that thereafter he intermarried with his second wife, Catherine, but that no children were born to them of said marriage. They admit that for the third time said John Walter, Sr., married his wife Wilhelmina, now also dead, and that the issue of said third marriage were four children, these defendants, namely, Oscar Walter, Adolph Walter, Hugo Walter and Pauline Crow. They also admit that on November, 1888, the said John Walter, Sr., married for the fourth time and that no issue were born of said marriage, and that he afterwards divorced from his said fourth wife.

5. They admit the allegations contained in the fifth paragraph of the bill of complaint.

35 6. They are informed and believe that the matters and things contained in the sixth paragraph of the bill of complaint are true, but having no certain knowledge thereof, and as said matters are all of record, they demand proof thereof by the record.

7. They admit the execution of the deed referred to in the seventh paragraph of the bill of complaint, in so far as said paragraph makes any allegations of fact, but they deny the inferences drawn from the provisions of said deed, or that the sole purpose of the said John Walter, Sr., was to provide for the benefit of his then living three children of his first marriage. On the contrary they say that said deed will speak for itself, and any construction placed thereon should be made by decree of this Honorable Court.

8. They believe the dates of the deaths of the various persons mentioned in the eighth paragraph of the bill of complaint are

correctly stated, but having no accurate knowledge thereof, they call for proof thereof. They admit that the defendant Henry W. Sohon, substituted trustee, is in possession of the property referred to in said paragraph, and is carrying out all the duties imposed upon him as trustee under the provisions of the deed in trust referred to in said bill of complaint, and among other things, is now engaged in paying off the sum of $2,000 to the children of Catherine Walter, the second wife of said John Walter, Sr., said children having been born by her marriage with a former husband.

9. These defendants deny that it was the intention of John Walter, Sr., to provide exclusively in the said deed in trust for his
36 said three children of his first wife. These defendants deny that the statement contained in said paragraph that the provision for the payment to be made to the surviving children of said John Walter, Sr., in the event of the death of any of his children without leaving issue, referred exclusively to the three children of the said John Walter, Sr., by his first wife, to wit, Catherine, Barbara and George, and on the contrary they aver that said provision referred and related to all the children of said John Walter, Sr., living at the time of his death, and surviving him and they deny that the construction placed by the said complainant in her bill of complaint upon the said language contained in said deed in trust is the proper construction, and that she is entitled to all the proceeds of the sale of the property in said paragraph referred to. These defendants further say that all the matters and things in said paragraph nine of the bill of complaint referred to are conclusions of law, which they are advised by counsel they are not called upon further to answer.

They are advised by counsel, however, and say that it was the intention of the said John Walter, Sr., by making the deed in trust referred to, to provide an income for the children of his first marriage, but he expressly limits such provision to a life estate in the various parcels of property described in the bill of complaint, after having first reserved to himself the income from the said property during his own lifetime, and that it was his intention in the event of the death of any of the said children of his first marriage, themselves leaving children surviving him, to provide for such
37 children, who would be his grandchildren, but in the event that any of the said children of his first marriage should die without having left issue surviving them, then it was his intention, after his own death, to provide for his children who should then be living, and who should survive him.

And having fully answered the bill of complaint these defendants pray to be hence dismissed with costs.

M. J. COLBERT,
Solicitor for Defendants Oscar Walter, Adolph Walter, Hugo Walter, and Pauline Crow.

M. J. COLBERT,
Solicitor.

We do solemnly swear that we have read the foregoing answer by us subscribed and know the contents thereof; that the matters and things therein stated on personal knowledge are true, and those stated on information and belief we believe to be true.

OSCAR WALTER.
ADOLPH WALTER.
HUGO L. WALTER.
PAULINE CROW.

Subscribed and sworn to before me this 16th day of January, A. D. 1908.

WM. K. ELLIS,
Notary Public, D. C.

38 *Answer of Henry W. Sohon, Trustee.*

Filed February 6, 1908.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 27459.

CATHARINE M. S. FROSCH
vs.
WILLIAM WALTER et al.

For answer to the bill of complaint in this cause filed against him and others, or so much thereof as he is advised it is necessary and proper for him to answer, the defendant, Henry W. Sohon, Trustee, says:

1. He admits that he was substituted as trustee under the deed in trust mentioned in the third paragraph of said bill by decree of this court in Equity Cause No. 19,265 and that he is now executing said trust.

2. He admits that he was substituted as trustee for the certain fund of Ten thousand Dollars ($10,000.00) mentioned in the sixth paragraph of said bill by decree of this Court in Equity Cause No. 9955 and that he is now executing said trust.

3. Further answering said bill this defendant says that he does not believe it would be proper for him to affirm or deny the contention of the complainant as to the proper construction of the said deed in trust mentioned in the third paragraph of said bill and
39 that he believes the said deed in trust ought to be construed by the Court. But said Equity Cause No. 19,265 was retained by said decree therein for the administration of said trust and the further direction of this trustee, and this defendant therefore submits to the Court whether such construction should be made in this cause or in said Equity Cause No. 19,265.

4. Further answering said bill this defendant admits that he has been collecting the rents from the property which is the subject of

the contention in this cause as well as other property mentioned in said deed in trust. Question having arisen as to how the sum of Two thousand Dollars ($2,000.00) provided to be paid to the children of Catharine A. Walter by said deed in trust as alleged in the eighth paragraph of said bill should be charged against the rents from said properties, it is necessary that said question be determined by the Court; and inasmuch as the Court has jurisdiction in said Equity Cause No. 19,265 over all the property yielding said rents and the Court has reserved the administration of said trust to said cause and this defendant was accountable in said cause first, he shows to the Court that he should be allowed to settle his account and have said question concerning the said rents settled in said Equity Cause No. 19,265.

And having fully answered, he prays to be hence dismissed with his reasonable costs.

H. W. SOHON.

I do solemnly swear that I have read the foregoing answer
40 by me subscribed and know the contents thereof; that the facts therein stated of my personal knowledge are true, and that those stated upon information and belief, I believe to be true.

H. W. SOHON.

Subscribed and sworn to before me this 6 day of February, 1908.

J. R. YOUNG, *Clk,*
By F. E. CUNNINGHAM, *Ass't Clk.*

Answer of William Walter.

Filed March 9, 1908.

In the Supreme Court of the District of Columbia.

In Equity. No. 27459.

CATHERINE M. FROSCH, Plaintiff,
vs.
WILLIAM WALTER et al., Defendants.

For answer to the bill of complaint filed in the above entitled cause the defendant, William Walter says:

1. He admits the allegations in the first paragraph of the bill.
2. He believes the allegations of the second paragraph are true.
3. He admits the allegations in the third paragraph are true.

41 4. He admits that John Walter, Sr., had, by his first wife, five children, namely, John Walter, Jr., William Walter, Barbara Walter, who afterwards married Albert King, George N. Walter, and the complainant, Catherine M. S. Frosch. He admits that John Walter, Jr., and his wife, Amelia, both died intestate, leaving surviving them two children, namely, the defendants, Henry

C. Walter and Frederick L. Walter. He admits that William Walter, the second of said children, is still living, and is one of the parties to this suit. He admits that Barbara Walter King died in August 1904 intestate, leaving eight children surviving her, namely, the defendants, Ida S. Monday, Emma A. Schwab, William A. King, J. Walter King, Margaret Collins, Caroline King, Eva A. King and Mabel D. King. He admits that George N. Walter died intestate in 1892, leaving no issue surviving him. He admits that the first wife of said John Walter, Sr., died prior to 1869, and that thereafter he intermarried with his second wife, Catherine, but that no children were born to them of said marriage. He admits that for the third time said John Walter, Sr., married his wife Wilhelmina, now also dead, and that the issue of said third marriage were four children, these defendants, namely, Oscar Walter, Adolph Walter, Hugo Walter and Pauline Crow. He also admits that on November 1888 the said John Walter, Sr., married for the fourth time and that no issue was born of said marriage, and that he afterwards divorced from said fourth wife.

5. He admits the allegations contained in the fifth paragraph of the bill of complaint.

42 6. He is informed and believes that the matters and things contained in the sixth paragraph of the bill of complaint are true, but having no certain knowledge thereof, and as said matters are all of record, he demands proof thereof by the record.

7. He admits the execution of the deed referred to in the seventh paragraph of the bill of complaint, in so far as said paragraph makes any allegations of fact, but he denies the inferences drawn from the provisions of said deed, or the sole purpose of the said John Walter, Sr., was to provide for the benefit of his living three children of his first marriage. On the contrary he says that said deed will speak for itself and its legal construction is for this court to determine.

8. He believes the dates of the deaths of the various persons mentioned in the eight- paragraph of the bill of complaint are correctly stated, but having no accurate knowledge thereof, he calls for proof thereof. He admits that the defendant Henry W. Sohon, substituted trustee, is in possession of the property referred to in said paragraph and is carrying out all the duties imposed upon him as trustee under provisions of the deed in trust referred to in said bill of complaint, and among other things, is now engaged in paying off the sum of $2,000 to the children of Catherine Walter, the second wife of said John Walter, Sr., said children having been born by her marriage with her former husband.

9. This defendant denies that it was the intention of John Walter, Sr., to provide exclusively in the said deed in trust for his said three children of his first wife. This defendant denies the state-

43 ment contained in said paragraph that the provision for the payment to be made to the surviving children of said John Walter, Sr., in the event of the death of any of his children without leaving issue, referred exclusively to the three children of the said John Walter, Sr., by his first wife, to wit, Catherine, Barbara, and George. On the contrary he avers that said provision referred and

the said John Walter, Sr., had in his mind at that time all the children of his first wife these alone being his living children. He denies the claim set forth by plaintiff that she is entitled to the whole of said property to the exclusion of this respondent. He denies by counsel that it was the intention of said John Walter, Sr., by said deed to provide for the three named Catharine Barbara and George children of his first wife; but that the construction of this instrument is a matter for this Honorable court.

WM. WALTER.

ANDREW LIPSCOMB,
Sol. for Defendant.

Personally appeared William Walter who on oath says that he has read the answer by him subscribed and knows the contents thereof that the facts therein stated on his present knowledge are true and those stated on information and belief he believes to be true.

WM. WALTER.

Sworn to and subscribed before me this 9th day of March 1908.
J. R. YOUNG, *Clerk,*
By FRED C. O'CONNELL,
Ass't Clerk.

44 *Joint and Several Answer of Ida S. Monday et als.*

Filed April 3, 1908.

In the Supreme Court of the District of Columbia.

In Equity. No. 27459.

CATHARINE M. S. FROSCH
vs.
WILLIAM WALTER et al.

The joint and several answer of the defendants, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King and Mabel D. King, to the bill of complaint against them and others in the above entitled cause.

1. The said defendants admit the averments of paragraph one of said bill.

2. They admit the averments of paragraph two of said bill, except the averment that they, said defendants, were all of full age at the time of the filing of said bill, the fact being that the said defendant, Mabel D. King, was not then of full age but has since attained her majority.

3. They admit that on June 18, 1869, John Walter Senior, the father of the complainant, was seized and possessed in fee-simple, in addition to other real estate in the District of Columbia, of lot two (2) in the subdivision of lot four (4) in square numbered two

hundred and ninety-two (292), described by metes and bounds in paragraph three (3) of said bill; that the said John Walter, Senior, and Catharine Walter, his then wife, on the said last men-
45 tioned day, executed a certain deed and thereby conveyed the said sub lot two (2) and other real estate to his son, John Walter, Junior, in and upon certain trusts in the said deed declared, and that the said deed was recorded as averred in paragraph three (3) of said bill; and that the exhibit attached to the said bill, marked "Complainant's Exhibit No. 1" is a copy of said deed.

4. They admit, as averred in paragraph four (4) of said bill, that by has first marriage with Appollonia Diengle, the said John Walter, Senior, had five children, viz., John Walter, Junior, William Walter, Barbara Walter, George N. Walter and Catharine M. S. Walter, and that the facts in regard to the marriages, birth of issue and deaths among said children, are correctly stated in said paragraph; and that other children were born to the said John and Appollonia who died in infancy; that the said Appollonia, the first wife of the said John Walter, Senior, died prior to the year 1869, and that there was no issue of his marriage to Catharine Walter, his second wife, who at the time of the marriage was a widow with three children by her first husband; and that after the death of his second wife, the said Catharine, the said John Walter, Senior, married Wilhelmina Aufrecht by whom he had four (4) children as stated in said paragraph; and that after the death of the said Wilhelmina, his third wife, the said John Walter, Senior, married Johanna or Anna Mygens, from whom he was divorced absolutely, and that there was no issue of this marriage.

5. They admit, as averred in paragraph five (5) of said bill, that on April 12, 1907, the said John Walter, Senior, died leav-
46 ing a last will and testament, dated March 3, 1906, and that "Complainant's Exhibit No. 2" is a copy of the same.

6. They admit, as averred in paragraph six (6) of said bill, that by a decree passed in Equity Cause, No. 6093, in this court, R. Ross Perry was appointed trustee in the place and stead of John Walter, Junior, under the said deed of conveyance in trust, dated June 18, 1869; and that thereafter in Equity Cause, No. 9955, in this court, brought by the complainant, a decree was passed whereby Job Barnard was substituted as trustee in the place and stead of said R. Ross Perry, in respect of a trust fund of $10,000.00, mentioned in said deed of conveyance in trust, dated June 18, 1869, and that by a subsequent decree passed in said cause, the defendant, Henry W. Sohon, was substituted as trustee in the place and stead of the said Job Barnard, in respect of said $10,000.00 fund; and that thereafter, in Equity Cause, No. 19265, in this court, upon a bill filed by said R. Ross Perry, praying to be relieved as substituted trustee under the said deed of conveyance in trust, a decree was passed substituting the defendant, Henry W. Sohon, as trustee in his place and stead under said deed; and that "Complainant's Exhibit No. 3" to the bill consists of copies of said several decrees.

7. They admit, as averred in paragraph seven (7) of said bill, that the said John Walter, Senior, executed the said deed in trust,

after the death of his first wife and during his second marriage, and that his intention and purpose in the execution of the same,
47 was to make provision for three of his children by his first marriage, and that the said intention and purpose is manifested by the language used in the introductory part of said instrument, quoted in said paragraph, that is to say:

"And whereas the said party of the first part from consideration of blood and natural affection is desirous of making provision for his children by his first wife, to wit, Catharine Magdalena Sophia Walter, George N. Walter, and Mrs. Barbara King."

These defendants further admit that by the said deed in trust, different parcels of real estate owned by the said John Walter, Senior, were set apart for the benefit of each of his said three (3) children, viz., Catharine M. S. Walter, George N. Walter, and Barbara King, respectively, and their children, and that by said deed in trust the rents, issues and profits of said parcels were to be paid by John Walter, Junior, the trustee, to the said John Walter, Senior, for and during the term of the natural life of him the said John Walter, Senior, and that in other respects the provision made by the said deed in trust in the case of each of said three children was the same, *mutatis mutandis*, as that made for George N. Walter, and quoted in said paragraph seven (7), and which had relation to the property described in paragraph three (3) of said bill, that is to say:

"In trust to pay over to the said George N. Walter, the youngest son of the said John Walter, Senior, the rents, issues and profits of said property for and during the term of his natural life and from and after his decease to hold the said property for the use of all and every the children of the said George N. Walter in fee and their heirs forever."

And that the said deed in trust contains the following provisions as to the construction of which the judgment of the court is
48 invoked by the said bill, that is to say:

"And it is hereby further witnesse*th* that in the event of the death of any one of the said above mentioned children of the said John Walter, Senior, to wit, Catharine, George and Barbara, without leaving any child or children, or any issue of any child or children then and in that case that the property held in trust by said trustee, party of the second part, for the benefit of the party then dying without issue shall be sold by the said party of the second part after the death of John Walter, Senior, and the proceeds paid over in equal portions to the surviving children of the said John Walter, Senior, party of the first part."

8. These defendants admit, that the said George N. Walter died intestate and without issue, on May 14, 1892, that the said Barbara King died on August 23, 1904, and that John Walter, Junior, died November 17, 1906, and that John Walter, Senior, died April 12, 1907, and that he had reserved a life estate in all of the properties described in said deed in trust and that the defendant, Henry W. Sohon, as substituted trustee, has possession of certain of the properties mentioned in said deed in trust, and that as such trustee he is carrying into effect the direction of the said deed in regard to the

payment of the sum of $2000.00 to the children of the said second wife of the said John Walter, Senior, by applying the rents, issues and profits of the said properties to such payment.

9. These defendants for answer to the averments of paragraph nine (9) of said bill, respectfully submit that upon the face of the said deed in trust, dated June 18, 1869, it is evident the intent and purpose of the said John Walter, Senior, in the execution of the same, was to make provision, solely and exclusively for his said three (3) children, Catharine M. S. Walter, George N. Walter and
49 Mrs. Barbara King; and that in the case of the death of either of them without issue the property set apart for the one so dying should go to the two of them who survived the one so dying; and that in such execution he did not intend in the case of such death, that the said William Walter and the said John Walter, Junior, or any child or children who might thereafter be born to him should be or become invested, under said deed in trust, with any interest in such property.

These defendants respectfully submit further that in determining the intent and meaning of the said provisions of the said deed in trust in regard to the sale of the property set apart for the said three (3) children respectively in the case of the death of either of them without issue and the distribution of the proceeds of such sale it is proper to consider the situation of the said John Walter, Senior, at the time of the execution by him and his wife Catharine of the said deed in trust, as such situation is indicated by certain facts and circumstances which have a bearing upon the matter of such execution and tend to enlighten such intent and meaning, and by which the averments of these defendants above made as to the same are supported.

The said facts and circumstances, as these defendants are informed and believe and aver, were as follows:

The second marriage of the said John Walter, Senior, took place on April 30, 1863, and at the time of the execution of the said deed in trust, to wit, June 18, 1869, he and his wife Catharine had been living together for nearly six years; no issue had been born to them and hope of such issue had been abandoned by them, and
50 the said John Walter, Senior, did not then contemplate another and future marriage. He was then a grandfather as issue had been born of the marriage of his daughter Barbara to Albert King.

On said June 18, 1869, title of record to a certain parcel of ground, being parts of lots 5 and 6 in square 323 in the City of Washington, was in the said William Walter, which said parcel had been theretofore purchased from Joseph Nathan by said John Walter, Senior, by whom the purchase money of $4000. had been paid to said Nathan, who, at the instance of the said John Walter, Senior, had conveyed said parcel to the said William Walter in fee.

On said June 18, 1869, title of record to a certain other parcel of ground, being lot 8 and part of lot 9 in square 347 in said City, was in the said William Walter and the said John Walter, Junior, which parcel had been theretofore purchased from John W. Nairn

by the said John Walter, Senior, by whom the purchase money of $8500.00 had been paid to said Nairn, who, at the instance and by the direction of the said John Walter, Senior, had conveyed the said parcel to the said William Walter and John Walter, Junior, in fee.

Under these circumstances and as shown by his subsequent acts the said John Walter, Senior, made provision for his said sons, William Walter and John Walter, Junior, by separate and distinct instruments and then for his remaining three children by his first wife, to wit, Catharine M. S. Walter, George N. Walter and Barbara King, by a single instrument.

The provision for the said William Walter was effected in the following manner:

51 By a deed dated on said June 18, 1869, and recorded June 30, 1869, in liber D 9 at folio 374 of the land records, the said William Walter, at the instance and by the direction of his said father, and for the nominal consideration of one dollar, conveyed to the latter the said parcel, being parts of lots 5 and 6 in square 323, in fee.

By deed dated on said June 18, 1869, and recorded on June 30, 1869, in liber T & R 12 at folio 370 of said land records, the said John Walter, Junior, at the instance and by the direction of his said father, and for the nominal consideration of one dollar conveyed to the said William Walter an undivided one-half interest in the other parcel, being lot 8 and part of lot 9 in square 377, thus vesting the whole title to said parcel in said William Walter in fee as a provision for him according to the intent of his father, and as stated in the said deed in trust, dated June 18, 1869, by which the said John Walter, Senior, made provision for said Catharine and George N. Walter and Barbara King.

By deed dated on said June 18, 1869, and recorded June 30, 1869, in liber D 9 at folio 372 of said land records the said John Walter, Senior, and Catharine, his wife, conveyed to said John Walter, Junior, lot 10 in square 347, for the consideration of natural love and affection and $10,000.00, thus vesting title to said lot in said John Walter, Junior, in fee, as a provision for him according to the intent of his said father, and as stated in the said deed in trust, dated June 18, 1869, by which the said John Walter, Senior, made provision for the said Catharine and George N. Walter and the said Barbara King.

52 And that having thus made provision for his sons William Walter and John Walter, Junior, the said John Walter, Senior, made provision for his three remaining children, Catharine, George and Barbara, by the said deed in trust, dated June 18, 1869, in the bill of complaint mentioned.

And further answering said paragraph 9 of the bill these defendants aver that the said deeds to the said William Walter and John Walter, Junior, contain no provision that upon the death of either of them without issue, the said Catharine, George or Barbara, or the survivor of the said William or John, Junior, as the case might be, should be entitled to any interest in the property conveyed to the one so dying without issue, and contain no reference

to the said Catharine, George or Barbara by name or by implication; and that by the said deeds the said William and John Walter, Junior, became the owners in fee of the property conveyed to them respectively, with power to dispose of the same, of course, by deed or will, and not subject to burden or condition by way of a reservation of a life estate in the same to their said father; while under the said deed in trust making provision for the said Catharine, George and Barbara, the property set apart for them respectively was subject to such burden and condition and the beneficial use of it by them was postponed until the death of their father and could then be enjoyed only for their respective lives, involving, obviously, a gross inequality in the beneficial use by the parties, of the properties set apart as a provision for them, in favor of his said sons, William Walter and John Walter, Junior, on the one hand, and to
53 the disadvantage of his three remaining children on the other; which inequality it cannot be reasonably assumed was meant and intended by their said father especially in view of the fact, that his intention to equalize the provision made for them, is expressly stated in the said deed in trust to John Walter, Junior, and in view of the further fact that the said inequality would be increased and aggravated by giving and ensuring to them, the said William Walter and John Walter, Junior, a share in the proceeds of sale of the property set apart for any one of the said three remaining children who might die without children.

These defendants aver that said facts and circumstances and fair and reasonable intendments from them, considered, that in the disposition made by the said John Walter, Senior, of the properties real and personal, mentioned and described in the said three deeds, to wit, the one to the said William Walter, in his own right, the one to the said John Walter, Junior, in his own right, and the one to the said John Walter, Junior, in trust, he, the said John Walter, Senior, meant and intended by the said deed to the said William Walter, that the property conveyed should constitute the whole of the provision to be made for him, said William Walter; and that neither of the brothers and sisters of the said William Walter should, in any event, take or become invested with any interest therein, under said deed; and that in like manner he, the said John Walter, Senior, meant and intended by the said deed to the said John Walter, Junior, in his own right that the property conveyed, with certain improvements thereto, then being made by him, the said John Walter, Senior, should constitute the whole of the provision to be made for
54 him the said John Walter, Junior, and that neither of the brothers and sisters of him, the said John Walter, Junior, should in any event take or become invested with any interest therein, under said deed; and that in like manner the said John Walter, Senior, by the said deed of conveyance of the said residue, in trust, meant and intended that the said residue should constitute a provision for his said three remaining children, to wit, Catharine, George N. and Barbara, and their respective issue, and so that in the event of the death of either of them without issue the proceeds of the sale by the trustee of the property set apart for the one so dying should be divided between the two of said three children who should

survive the one of their number so dying; and that their said brothers William and John Walter, Junior, should not in any event take or become invested, under said deed in trust, with any interest in the said residue.

These defendants further answering say, that in the direction in the said deed in trust given for a sale "after the death of John Walter, Senior" of the property held in trust for any one of said three children, to-wit, Catharine, George N. and Barbara, who should die without issue and for a distribution of the proceeds of sale among "the surviving children of the said John Walter, Senior," the words last mentioned are predicated upon and have relation to the death antecedently mentioned in the same clause, of any one of the said three children and are not predicated upon and do not relate to the death of said John Walter, Senior, which is mentioned merely as a specification of the time after which such sale
55 should take place; and that said last mentioned words must be construed as referring to those of the said three children of John Walter, Senior, who should survive the one of them so dying or as referring to all of his said five children who should survive the one of his said three children so dying.

That by the construction first suggested, which these defendants contend is the proper one, the complainant, as a child of the said John Walter, Senior, who survived her said brother George N. Walter, would be entitled to one-half of the proceeds of the sale of the property described in paragraph three of the bill; and these defendants as the children of the said Barbara King, deceased, a child of the said John Walter, Senior, who also survived her brother, the said George N. Walter, would be entitled to the other one-half of such proceeds; while by the other construction suggested, which these defendants contend is inadmissible, for the reasons above stated, the said William Walter as a child of the said John Walter, Senior, who survived his said brother George N. Walter and the children of said John Walter, Junior, deceased, a child of the said John Walter, Senior, who survived his said brother George N. Walter, would share equally in said proceeds, with the complainant and these defendants.

And these defendants further answering say, that in so far as the matters above set forth in answer to the averments of paragraph nine of the said bill agree with said averments they admit the same and that in so far as said matters conflict with the averments of said paragraph nine or of other paragraphs of said bill they deny such averments.

IDA S. MONDAY.
EMMA A. SCHWAB.
56 J. HARRY KING.
MARGARET A. COLLINS.
CAROLINE M. KING.
EVA A. KING.
MABEL D. KING.
WILLIAM A. KING.

HUGH T. TAGGART,
Sol'r for Def'ts.

Joint Answer of Henry C. and Frederick L. Walter.

Filed April 8, 1908.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

In Equity. No. 27459.

CATHERINE M. S. FROSCH, Complainant,
vs.
WILLIAM WALTER et al., Defendants.

Answering so much of the bill of complaint herein as these defendants are advised it is material for them to answer these defendants say they are advised and believe and upon such information and belief they aver and claim that according to the true intent and meaning of the provision of the said deed in trust set out in paragraph seventh of the bill as it is lawful and proper to construe the same the proceeds of the sale of the said property should be paid over to all the children of the said John Walter, Senior, and that by the language of the said deed in trust is meant the children of the
57 said John Walter, senior, surviving the deceased children of said Walter and not limiting the same to children surviving him, the said John Walter senior, by virtue whereof, these defendants, being the children of John Walter, Junior, which said John Walter, Junior, survived the said George and Barbara, and the interest of the said John Walter, Junior, having vested in expectancy upon the termination of the life estate of the said John Walter, Senior, these defendants claim the same in representation of the said John Walter, Junior, and pray that the bill be dismissed.

HENRY C. WALTER,
FREDERICK L. WALTER,
By JAS. LEWIS SMITH, *Solicitor.*

OLIVER METZEROTT,
ARCHER & SMITH,
Solicitors for Defendants
H. C. & F. L. Walter.

DISTRICT OF COLUMBIA, *ss:*

I, Henry C. Walter, do solemnly swear that I have read the above answer by me subscribed and know the contents thereof: that the facts therein stated as of my personal knowledge are true and those stated upon information and belief I believe to be true.

HENRY C. WALTER.

Subscribed and sworn to before me this 6th day of April 1908.

[SEAL.] SAMUEL H. WALKER,
Notary Public.

58 *Testimony on Behalf of Complainant.*

Filed May 27, 1908.

In the Supreme Court of the District of Columbia.

In Equity. No. 27459.

CATHARINE M. S. FROSCH
vs.
WILLIAM WALTER et al.

At the request of Messrs. Barnard & Johnson, of Solicitors for complainant, I have this day fixed Saturday next, April 25, 1908, at ten o'clock in the forenoon of that day, and my office, No. 426 Fifth Street, Northwest, in the City of Washington, District of Columbia, as the time and place when and where testimony on behalf of the complainant in the above entitled cause will be taken before me.

ALBERT HARPER,
Examiner in Chancery.

April 21, 1908.

To Messrs. Andrew A. Lipscomb, Michael J. Colbert, O. Metzerott, Archer & Smith, Hugh T. Taggart, and Henry W. Sohon, solicitors for respective defendants:

Take notice that at the time and place fixed in the foregoing order we shall take testimony on behalf of the complainant in the above entitled cause.

BARNARD & JOHNSON,
Of Solicitors for Complainant.

April 21, 1908.

59 Service acknowledged this 21st day of April, 1908.

HUGH T. TAGGART,
Sol'r for Ida S. Monday et al., Def'ts.
H. W. SOHON,
Trustee, for Self.
M. J. COLBERT.
ARCHER & SMITH.
O. METZEROTT.
ANDREW LIPSCOMB,
Per A. M. P.

In the Supreme Court of the District of Columbia.

In Equity. No. 27459.

CATHARINE M. S. FROSCH
vs.
WILLIAM WALTER et al.

Be it remembered That at an examination of witnesses begun and held on the 25th day of April, 1908, pursuant to foregoing notice, personally appeared before me, Albert Harper, an Examiner in Chancery of the Supreme Court of the District of Columbia, the within named Thomas J. Owen and Catharine M. S. Frosch, who, being produced as witnesses of lawful age for and on behalf of the complainant, and being first duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth, touching the matters at issue in the above entitled cause, did depose and say as follows:

60 APRIL 25, 1908, SATURDAY—10 o'clock a. m.

Met pursuant to foregoing notice.

Appearances: Messrs. Benjamin F. Leighton and Ralph P. Barnard, of Solicitors for complainant, who is present; Andrew A. Lipscomb, Esq., Solicitor for the defendant, William Walter; Michael J. Colbert, Esq., Solicitor for the defendants, Oscar Walter, Adolph Walter, Hugo Walter and Pauline Crow; Hugh T. Taggart, Esq., Solicitor for the defendants, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King (who is present), Margaret Collins, Caroline M. King, Eva A. King, and Mabel D. King; also the Examiner, Albert Harper, Esq., and

THOMAS J. OWEN, who, being produced as a witness of lawful age for and on behalf of the complainant, and being first duly sworn, deposes and says:

Direct examination.

By Mr. BARNARD:

Q. Will you please state your name and business? A. My name is Thomas J. Owen; I am a real estate auctioneer and appraiser, with my office at No. 1331 G Street, Northwest, in this city.

Q. How long have you been engaged in that business? A. About eighteen years, in this city.

Q. In selling and appraising real estate in this city?

61 A. Yes.

Q. Have you examined the property known as No. 1236 Pennsylvania Avenue, Northwest, in this city, being part of lot 2 in the subdivision of lot 4 in square 292, and more particularly described in the third paragraph of the bill of complaint in this cause? A. I have examined it.

Q. What, in your opinion, is the fair market value of that property? A. Thirty-four thousand six hundred and ten dollars.

Q. That estimate includes the ground and improvements? A. Yes.

Q. Have you made a separate valuation of the ground and improvements? A. Yes.

Q. What do you consider the ground worth? A. At fifteen dollars per square foot twenty-nine thousand six hundred and ten dollars.

Q. And the improvements? A. Five thousand dollars.

Q. The total of your estimate of the value of the ground and improvements being what? A. Thirty-four thousand six hundred and ten dollars.

Q. How many square feet in that lot did you figure on? A. Nineteen hundred and seventy-four square feet.

Mr. Taggart, solicitor for the defendants, Ida Monday and others, children of Barbara King, deceased, objects to all testimony in relation to the present value of the several properties, as to
62 which the witness has been questioned, as being immaterial.

Q. Have you also valued the property known as No. 930 and 932 E Street, Northwest, in this city, being lot L and the West half of lot M, in Patterson's subdivision of original lot 16, in square 378, in this city; and also the property known as No. 120 E Street, Northwest, in this city, being lot 26, in square 571? A. I have examined the pieces of property mentioned.

Q. What, in your opinion, is the fair market value of those pieces of property? A. Premises Nos. 930 and 932 E Street, Northwest, I value together at twenty-two thousand four hundred and thirty dollars including the ground and improvements in that estimate; and premises No. 120 E Street, Northwest, I value at six thousand seven hundred dollars, including in that estimate the ground and improvements.

Q. What is your total valuation of those three pieces of property? A. Twenty-nine thousand one hundred and thirty dollars, including the ground and improvements.

Q. Have you examined the property known as No. 1716 Pennsylvania Avenue, Northwest, in this city, and being the east half of lot 18 in square 168, together with right of way of 3.93 feet over the north end of lots 38, 39, 40 and 41 in said square? A. I have.

Q. What, in your opinion, is the fair market value of that property? A. Twenty-five thousand dollars, including the
63 ground and improvements.

Q. Have you examined the property known as Nos. 520 and 522 10th Street, Northwest, in this city, being lot 13, in square 347? A. Yes.

Q. What, in your opinion, is the fair market value of that property? A. Fifty-four thousand and sixty-four dollars.

Q. Have you examined the property known as No. 1013 E Street, Northwest, in this city, being part of lot 17, in square 347, together with the right of way in the rear of 11th Street? A. Yes.

Q. What, in your opinion, is the fair maket value of that prop-

erty? A. Eight thousand dollars, including the ground and improvements.

Q. Have you examined the property known as Nos. 310, 312 and 314 North Carolina Avenue, Southeast, in this city, being part of lot 3, and lots O, P, and Q, in square 791? A. I have.

Q. What, in your opinion, is the fair market value of that property? A. Fourteen thousand five hundred dollars, including the ground and improvement.

Q. What is the aggregate of your valuations of the property No. 1013 E Street, and on North Carolina Avenue? A. Twenty-two thousand, five hundred dollars.

Mr. TAGGART: All the questions propounded to the wit-
64 ness and his answers thereto, as to values of the several properties mentioned, are objected to on the ground assigned in my last objection.

Cross-examination.

By Mr. TAGGART:

Q. I understand that your experience as a dealer in real estate in this city began in the year 1890? A. Yes.

Q. You were not in the business of dealing in real estate in this city in June, 1869? A. No.

Q. So that you would not be able to state what the values of the several pieces of property to which you have testified then were? A. No, I could not.

Redirect.

By Mr. BARNARD:

Q. Your estimates of the values of the various pieces of property to which you have testified are based upon their fair market values at the present time? A. Yes.

Q. Were you in the real estate business in this city in August, 1900? Yes.

Q. Have these various pieces of property to which you have testified increased or decreased in value since that time? A.
65 They have increased in value.

Q. All of them? A. I do not know that the property Nos. 930 and 932 E Street has, or that the property on North Carolina Avenue has; but I think all the rest of the property has increased in value.

Q. How much would you say? A. Some have increased more, of course, the location being different.

Q. Would that be a material increase in value? A. Material increase in value of the property out here on 10th Street, and on Pennsylvania Avenue; but the E Street property not so much as the others; the E Street property has not increased in proportion to the increased value of the property on Pennsylvania Avenue and on 10th Street.

Q. Could you state about what proportion the increase was or is? A. The increase on those various properties varies.

WITNESS: In the last eight years, do you mean?

Mr. BARNARD: Practically that.

WITNESS: Take, for instance, Nos. 520 and 522 10th Street and No. 1236 Pennsylvania Avenue, in the last eight years that property has increased from thirty to forty percent, I should think.

Q. What do you say as to the property No. 1716 Pennsylvania Avenue? A. I should say that has increased twenty-five percent.

Q. What do you say as to the property No. 1013 E
66 Street? A. That has increased twenty-five percent.

Q. And what do you say as to the property known as Nos. 930 and 932 E Street? A. That has not increased quite so much, not over twenty percent.

Mr. TAGGART: I object to all this testimony upon the grounds stated in my first objection.

THOS. J. OWEN.

Subscribed and sworn to before me this 25th day of April, 1908.

ALBERT HARPER,
Examiner.

Whereupon:

Mr. BARNARD: Solicitors for complainant here give in evidence the Exhibits attached to and filed with the bill of complaint in this cause, viz:

Complainant's Exhibit No. 1, being certified copy of deed in trust from John Walter, Senior, et ux. to John Walter, Junior, dated June 18, 1869, and recorded September 10, 1872, in liber 696, folio 311, of the land records of the District of Columbia;

Complainant's Exhibit No. 2, being certified copy of the last will and testament of John Walter, dated March 3, 1906, and admitted to probate and record, April 29, 1907, in the office of the
67 Register of Wills for the District of Columbia; and

Complainant's Exhibit No. 3, being certified copies of decree passed and filed May 11, 1878, in Equity cause No. 6093, of John Walter, Senior, et al., vs. John Walter, Junior, Trustee, in the Supreme Court of the District of Columbia; of decree passed and filed March 5, 1887, in Equity cause No. 9955 of Catharine M. S. Nauck vs. John Walter, et al., in said Supreme Court of the District of Columbia; of decree passed and filed May 10, 1898, in Equity cause No. 19265 of R. Ross Perry, Trustee, vs. John Walter, et al., in said Supreme Court of the District of Columbia; and of decree passed and filed in Equity cause No. 9955, of Catharine M. S. Nauck vs. John Walter, Junior, et al., in said Supreme Court of the District of Columbia, May 14, 1901.

And Solicitors for complainant here give in evidence certified copies of certain deeds, viz:

Deed (to be hereafter produced) from Joseph Nathan to William Walter, dated February 24, 1865, and recorded April 25, 1865, in liber N. C. T. 56, folio 258, of the land records of the District of Columbia.

Deed from John W. Nairn to John Walter and William Walter,

dated November 18, 1867, and recorded May 13, 1869, in liber D No. 5, folio 423, of said land records.

Deed from John Walter, Senior, and wife, to John Walter, Junior, dated June 18, 1869, and recorded June 30, 1869, in Liber D. No. 9, folio 372, of said land records.

Deed from John Walter, Junior, to William Walter, dated June 18, 1869, and recorded June 30, 1869, in Liber T. R. No. 12, folio 370, of said land records.

68 Deed from John Walter, Senior, to Frederica Pauline Crow, dated August 18, 1900, and recorded August 18, 1900, in Liber 2516, folio 61, of said land records.

Deed from John Walter, Senior, to Laurence Hugo Walter, dated August 18, 1900, and recorded August 18, 1900, in Liber 2516, folio 65, of said land records.

Deed from John Walter, Senior, to Carl Oscar Walter, dated August 18, 1900, and recorded August 18, 1900, in liber 2516, folio 68, of said land records; and—

Deed from John Walter, Senior, to Adolph Walter, dated August 18, 1900, and recorded August 18, 1900, in liber 2516, folio 71, of said land records. (See bottom of page 23 hereof.)

(NOTE.—Said deeds are herewith filed in evidence and marked, respectively, Exhibits A. H. Nos. 1 to 8, both inclusive.)

And, thereupon CATHARINE M. S. FROSCH, being produced as a witness of lawful age for and on behalf of herself as the complainant, and being first duly sworn, deposes and says:

Direct examination.

By Mr. BARNARD:

Q. Mrs. Frosch, you are the complainant in this suit, are you not? A. Yes, sir; I am.

69 Q. And one of the children of John Walter, Senior, by his first wife? A. Yes.

Q. How many children did your father have by his first wife?

WITNESS: Do you mean, living?

Mr. BARNARD: All together.

A. So far as I know, there must be nine of us, all together. Four of them died when they were small, and before I was born.

Q. How many of them grew to manhood and womanhood? A. Five of us.

Q. And the other four were unmarried, of course, when they died? A. Yes.

Q. What were the names of those four? A. I could not tell you. They died before I was born.

Q. What were the names of the five who grew up? A. John, William, Barbara, George, and myself.

Q. And they were the five children your father had living in June, 1869? A. Yes.

Q. Did your brother John marry? A. Yes.

Q. Did he have any children? A. Yes, two.

Q. Name them. A. Henry and Frederick.

70 Q. They are two of the defendants to this suit? A. Yes.
Q. Is your brother John living or dead? A. He is dead.
Q. When did he die? A. November 17, 1906.
Q. Leaving these two children? A. Yes.
Q. And no others? A. That is all.
Q. Is his wife living or dead? A. She died before he died.
Q. Are these two children of your brother John married or single? A. Henry is married. I do not know about Frederick.
Q. Do you know the name of Henry's wife? A. No, I do not. His first wife died.
Q. He had been married twice? A. Yes.
Q. Is your brother William living or dead? A. He is living.
Q. Is he married? A. Yes.
Q. Has he any children? A. Three.
Q. Do you know their names? A. Florence, Mamie and Annie.
Q. Your brother William is living in this city of Washington, is he not? A. Yes.
71 Q. Was your sister Barbara married or single in June, 1869, at the time of the execution of this deed in trust, Exhibit No. 1 to the bill of complaint in this cause? A. She was married.
Q. Is she now living or dead? A. She is dead.
Q. When did she die? A. She died the 23rd of August, 1904.
Q. Did she leave any children? A. Yes.
Q. Will you please give their names? A. Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, and Mabel D. King.
Q. Are those eight children living? A. Yes.
Q. Are they all of full age? A. I believe they are now.
Q. And they are named as defendants to the bill of complaint in this cause? A. Yes.
Q. Do you know whom your sister Barbara married? A. Albert King.
Q. Is he living? A. Yes.
Q. Was your brother George ever married? A. Yes, sir; but not at the time of his death.
Q. Did his wife die? A. No, sir; they were divorced.
72 Q. At the time he died, was he divorced from his wife? A. Yes.
Q. Did he leave any children by his divorced wife? A. No.
Q. Did he leave any will? A. No, not that I know of; he didn't have anything to leave by will, so far as I know.
Q. Your brother George never married again, after he was divorced from his first wife, did he? A. No.
Q. And, therefore, of course, he left no issue? A. No.
Q. When did your brother George die? A. May 14, 1892.
Q. You are the Catharine M. S. Walter who is mentioned in the deed in trust of June, 1869, Exhibit No. 1 to the bill of complaint in this cause? A. Yes.
Q. You have been married? A. Yes, sir; I was married the second time.

Q. Whom did you first marry? A. Arthur Nauck.
Q. Did you have any children by him? A. Yes, sir; I had four children by him.
Q. Are they living or dead? A. They are all living.
Q. Will you please name them? A. Minnie, Arthur, Charlie, and Ernest, are the four living in this city; my daughter
73 lives in Congress Heights.
Q. Are they married or single? A. My daughter is married.
Q. Are the boys single? A. They are all single.
Q. What is the full name of your first husband? A. Arthur Adolph Nauck.
Q. Is he living or dead? A. He is dead.
Q. Did you marry again? A. Yes.
Q. Whom? A. Frederick W. Frosch.
Q. When did you marry him? A. March 9, 1907.
Q. You have had no children by him, have you? A. No.
Q. Do you know when your father died? A. He died April 12, 1907.
Q. He left a will, did he not? A. I never saw one. I only know what I saw in the papers.
Q. Mr. Sohon was appointed Executor under that will, was he not? A. Yes, sir; but he never read the will to me.
Q. Did he ever settle with you for what was coming to you under the will? A. All that was coming to me personally was money.
74 Q. Mrs. Frosch, do you remember whether your father was married to his second wife in 1869? A. To his second wife.
Q. What was her name? A. Her first name was Catharine.
Q. Do you remember when his first wife died? A. She died when I was between two and three years old.
Q. Prior to the date of the deed in trust, filed as Exhibit No. 1 to the bill of complaint in this cause? A. Yes.
Q. Do you know when your father's second wife died? A. I could not tell the year, but I was 16 years old when she died.
Q. And how old are you now? A. I am fifty years old.
Q. So, that was about thirty-four years ago? A. Yes.
Q. Then, she died about 1874? A. Yes.
Q. Your father had no children by his second wife? A. No.
Q. Your father's second wife had been married before she had married him? A. Yes.
Q. Did she have any children by her first husband? A. She had three children by her first husband: Catharine, Mark and Frank.
Q. Are they the three children mentioned in this deed in trust (Exhibit No. 1 to the bill of complaint in this cause) who
75 got the two thousand dollars provided for them in that deed? A. Yes.
Q. One of those children has been married? A. They are all three married.

Q. Do you know their marriage names? A. The daughter Catharine's name is Mrs. Berger. Their father was related to my father.

Q. Your father was married the third time, was he not? A. Yes.

Q. To whom? A. Her name was Wilhelmina Aufrecht.

Q. Were any children born of that marriage? A. Yes.

Q. Do you know their names? A. Oscar Walter, Adolph Walter, Pauline Crow, and Hugo Walter.

Q. They are also named as defendants to this suit? A. Yes.

Q. Do you know when your father's third wife died? A. She died somewhere about 1898.

Q. Did your father ever marry again?

A. Yes.

Q. Whom did he marry the fourth time? A. Johanna Mygies, as I heard—I never associated with her. I have met her once or twice.

Q. What became of her? A. My father got a divorce from her; and she is living on Kramer Street, somewhere, in this city.

76 Q. Did they ever have any children? A. No.

Q. When your father died he was not married? A. No.

Q. Were you living at home in June, 1869, with your father and your stepmother? A. Yes.

Q. And what other children were there? A. John, the Doctor, was there, off and on. Brother William was home, but not constantly; and my sister, Mrs. King, was at home.

Q. She was married at that time, was she? A. Yes.

Q. Did she live with your father, or with Mr. King? A. She was just at home on a visit, and then they went to a farm in Maryland.

Q. How old were you at that time? A. About eleven years old.

Q. Do you remember about the circumstances connected with the making of this deed in trust—Exhibit No. 1 to the bill of complaint in this cause?

Mr. COLBERT: Objected to, because the deed will speak for itself.

A. I do not know anything about that. Father never confided in his children.

Cross-examination.

By Mr. TAGGART:

Q. In 1869, I understand, Mrs. Frosch, you were eleven

77 years of age? A. Yes.

Q. Do you remember about the relations that prevailed at that time between your father and these five children?

Mr. COLBERT: Objected to because incompetent as affecting the deed in controversy.

Mr. TAGGART: Do you understand my question, Mrs. Frosch?

WITNESS: Yes.

Mr. TAGGART: That is, were those relations friendly, or otherwise?

A. Oh, they were friendly.

WITNESS: Do you mean the four children by the third marriage?

Mr. TAGGART: No; by the first marriage.

WITNESS: They were all friendly.

Q. What was the age of your father's second wife at that time? A. I could not tell you that, I do not remember. I was nothing but a child.

Q. Do you remember her appearance? A. I do not think I would remember.

Q. Do you remember anything about the condition of her health at that time? A. She was a consumptive. She died of consumption.

Q. Did I understand you to say that she died about five years after the execution of this deed in trust, Exhibit No. 1 to the bill of complaint in this cause? A. She must have died after
78 that, but I do not remember just how long after.

Q. How long after her death was it when your father married the third time? A. She died in November, and he was married again the February following.

Q. Do you remember where they were married—at what church? A. At the Concordia Church.

Q. Where is that? A. 22nd and Pennsylvania Avenue, Northwest, in this city; a German Lutheran church.

By Mr. COLBERT:

Q. Mrs. Frosch, there were five surviving children of your father's first marriage? A. Yes.

Q. John was the eldest? A. The eldest.

Q. He died in 1906? A. Yes.

Q. Leaving two children, Henry and Frederick? A. Yes.

Q. William, the second child, is still living? A. Yes.

Q. Barbara King died, leaving the children represented here by Mr. Taggart; and George N. Walter died in 1892, as I understand? A. Yes.

Q. Leaving no children? A. No children.

79 Q. You are the youngest living child of your father's first marriage? A. Yes. I am the youngest child of that marriage.

Q. He married the second time prior to 1869? A. Yes.

Q. There were no surviving children of that marriage? A. No.

Q. Is your brother William still living? A. He is still living.

Q. Your brother John died in November, 1906, leaving no will? A. I do not know anything about any will.

Q. You never heard of any? A. No.

Q. Your brother George N. Walter died in 1892, as I understand? A. Yes.

Q. And, as I understand, he left no children? A. He left no children.

Q. And, as I understand, he left no will that you ever heard of? A. I never heard of any.

Q. The four children of the third marriage of your father (Oscar,

Adolph, Hugo and Pauline) are all living, and are all of full age? A. Yes.

CATHERINE M. S. FROSCH.

80 Subscribed and sworn to before me this 25th day of April, 1908.

ALBERT HARPER.
Examiner.

(Adjourned.)

And now, this 26th day of May, 1908, comes Ralph P. Barnard, Esq., of Solicitors for complainant, and gives in evidence certified copy of—

Deed from William Walter to John Walter, Senior, dated June 18, 1869, and recorded June 30, 1869, in Liber D No. 9, folio 374, of the land records of the District of Columbia.

(NOTE.—Said certified copy of deed is herewith filed in evidence and marked Exhibit A. H No. 9.)

And, thereupon, Solicitors for Complainant here close the testimony in chief in her behalf.

ALBERT HARPER.
Examiner.

EXHIBIT A. H. No. 1.

Liber N. C. T. 56, Folio 258 et seq.

Recorded 25th April, 1865.

Deed.

JOSEPH NATHAN
to
WILLIAM WALTER.

This Indenture, made this twenty-fourth day of February in the year of our Lord one thousand eight hundred and sixty-five, by and between Joseph Nathan and Catharina Nathan, his wife, of the one part, and William Walter, both parties of Washington, District of Columbia, of the other part, Witnesseth, that the said parties of the first part for and in consideration of the sum of Four Thou-
81 sand Dollars, current money of the United States to them in hand paid, at or before the sealing and delivery of these presents, by the said William Walter, the receipt of which is hereby acknowledged, have given, granted, bargained and sold, enfeoffed, conveyed, released and confirmed, and by these presents do give, grant, bargain and sell, enfeoff, convey, release and confirm unto the said William Walter, heirs and assigns forever, all that certain piece or parcel of land, situate, lying and being in the City of Washington, in the District of Columbia, and known and distinguished as all that part of lots numbered Five (5) and Six (6) in Square numbered Three hundred and twenty-three (323) beginning at a

point in the line of Twelfth (12th) Street West, Forty (40) feet, Eleven and a half (11½) inches South from the Northwest corner of said lot Six, and running thence East, at right angles with said Street, Ninety-five (95) feet, One (1) inch to the line of an alley, thence in a Southerly direction along the line of said alley, across lots Six and Five to a point ten (10) feet, west from the Southeast corner of said lot Five, thence east partly with one line of lot Five to Twelfth Street Ninety (90) feet, One (1) inch, thence North with the line of said Street Forty (40) feet, eleven and a half (11½) inches, to the place of beginning, containing 3,833 feet, 9 inches (more or less) of ground, the whole being the same property sold on the 5th of November 1863, by James W. Barker, and wife to Joseph Nathan, together with the buildings, improvements, rights, privileges, appurtenances and other hereditaments to the same belonging, or in any manner appertaining, and the remainders
82 reversions, rents issues and profits thereof, and all the right, title, and interest and estate of them the said parties of the first part in and to the same. To Have and to Hold the same, unto and for the only use and behoof, of him the said William Walter, his heirs and assigns forever. And the said parties of the first part for themselves, their heirs, executors and administrators, by these presents, covenant, promise and agree to and with the said William Walter his heirs and assigns, in manner following, to wit: that they the said parties of the first part and their heirs shall and will warrant and forever defend the said premises, with the appurtenances hereby bargained and sold unto him the said William Walter, heirs and assigns, from and against them the said parties of the first part, their heirs and assigns, and all persons claiming, or who may claim by, under or through them or either of them. And further that they, the said parties of the first part and their heirs shall and will at any and all times hereafter, at the request and cost of the said William Walter, his heirs and assigns, make and execute any and every other deed or assurance in law, for the more sure and effectual conveyance of the said premises, with the appurtenances to the said William Walter, his heirs and assigns, according to the true intent and meaning of these presents, that in the opinion of counsel learned in the law shall be necessary. In Testimony Whereof, the said Joseph Nathan and Catharina Nathan, his wife, have hereunto set their hands and affixed their seals the day and year first hereinbefore written.

JOSEPH NATHAN. [SEAL.]
KATHARINA NATHAN. [SEAL.]

Signed, sealed, stamped and delivered in presence of

LOUIS SCHADE.
JOHN WALTER.

Stamps $4, February 21, 1865.

W. WALTER.

83 DISTRICT OF COLUMBIA,
County of Washington, To wit:

I, Louis Schade a Notary Public in and for the County of Washington aforesaid, by lawful authority, duly commissioned and sworn, residing in the City of Washington, in the District of Columbia, do hereby certify that on this twenty-fourth day of February eighteen hundred and sixty-five, personally appeared before me in the County aforesaid, Joseph Nathan and his wife Catharina Nathan parties to a certain Deed bearing date the twenty-fourth day of February A. D. 1865, and hereto annexed, the said parties being personally well known to me, or satisfactorily proven to be the persons who executed the said Deed, and the said Joseph Nathan acknowledged the same to be his act and deed, and the said Catharina Nathan being by me examined privily and apart from her said husband, and having the Deed aforesaid fully explained to her by me, she, the said Catharina Nathan acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it. Given under my hand and Notarial seal this twenty-fourth day of February A. D. 1865.

[NOTARIAL SEAL.] LOUIS SCHADE,
Notary Public.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

84 This is to certify that the foregoing is a true and verified copy of an Instrument as recorded in Liber N. C. T. 56, Folio 258 et seq., one of the Land Records of the District of Columbia.

In Testimony whereof, I have hereunto set my hand and affixed the seal of this Office this 28th day of April, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

EXHIBIT A. H. No. 2.

Liber D. No. 5, Folio 423 et seq.

Recorded 13th of May, 1869.

Deed of Conveyance.

JOHN W. NAIRN
to
JOHN WALTER & WILLIAM WALTER.

This Indenture, Made this eighteenth day of November in the year of our Lord one thousand, eight hundred and sixty-seven, between John W. Nairn of Washington, District of Columbia, of the first part and John Walter, Jun. and William Walter of the same

place, of the second part: Witnesseth, That the said party of the first part for and in consideration of the sum of Eight thousand, Five hundred Dollars, in lawful money of the United States to him in hand paid by the said parties of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released and conveyed, and does by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said parties of the second part, their heirs and assigns forever, the following described property situate, lying and being in the City of Washington, District of Columbia and known as Lot numbered Eight
85 (8) in Square Three hundred and Seventy-seven (377) said Lot being the corner Lot of said Square on the Southwest corner of said Square at the intersection of E Street North with Tenth Street West. Also part of lot Nine (9) in Square Three hundred and Seventy-seven (377) beginning for the same at the Southwest corner of said lot Nine on Tenth Street West, running thence North with said Tenth Street Nineteen (19) feet, four (4) inches; thence East parallel with E Street North Sixty-one (61) feet, One (1) inch; thence South parallel with Tenth Street Nineteen (19) feet, four (4) inches; thence West parallel with E Street North Sixty-one (61) —, one (1) inch to the place of beginning it being the same property conveyed to the said party of the first part by Deeds, one from Sarah H. Nourse, et al., June 20, 1859 and the other from Jas. H. Nourse and wife July 8th 1859, together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, and title, interest, claim, and demand, either at law or in equity or otherwise however, of the said party of the first part, of, in, to, or out of the said pieces or parcels of ground and premises, to have and to hold the said pieces or parcels of ground and premises and appurtenances, unto the said parties of the second part, their heirs and assigns to their sole use, benefit and behoof forever, and the said party of the first part, for himself, his heirs, executors, and administrators *has* hereby covenant, promise
86 and agree to and with the said parties of the second part, their heirs and assigns, that he, the said party of the first — and his heirs, shall and will warrant and forever defend the said pieces or parcels of ground and premises and appurtenances unto the said parties of the second part, their heirs and assigns, from and against the claims of all persons, claiming or to claim the same, or any part thereof, by, from, under, or through him, them, or any of them. And further, that he, the said party of the first part and his heirs, shall and will at any and at all times hereafter, upon the request and the cost of the said parties of the second part, their heirs or assigns, make and execute all such other Deed or Deeds, or other assurances in law for the more certain and effectual conveyance of the said pieces or parcels of ground and premises and appurtenances unto the said parties of the second part, their heirs or assigns, as

the said parties of the second part, their heirs or their counsel learned in the law shall advise, devise or require.

In testimony whereof, the said party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

JNO. W. NAIRN. [SEAL.]

Signed, sealed and delivered in the presence of
JAMES E. FITCH.
JOHN WALTER, SEN.

$8.50 Stamps.

DISTRICT OF COLUMBIA,
County of Washington, ss:

87 I, Louis Schade, a Notary Public in and for the County, — District aforesaid, Do Hereby Certify, that John W. Nairn, party to a certain Deed bearing date on the Eighteenth day of November A. D. 1867 and hereto annexed, personally appeared before me in the County & District aforesaid, the said John W. Nairn, being personally well known to me to be the person who executed the said Deed, and acknowledged the same to be his act and deed. Given under my hand and Notarial seal, this Eighteenth day of November A. D. 1867.

[NOTARIAL SEAL.] LOUIS SCHADE,
Notary Public.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber D. No. 5, folio 423, et seq., one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this Office this 1st day of April, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds.

88 EXHIBIT A. H. No. 3.

Liber D No. 9, Folio 372.

Recorded June 30, 1869.

Deed.

JOHN WALTER, SR., & WF.
to
JOHN WALTER, JR.

This Indenture made this Eighteenth day of June in the year of our Lord one thousand eight Hundred and sixty nine between John Walter Senior and his wife Catherine of the City of Washing-

ton and District of Columbia of the first part and John Walter Junior of the same place of the second part. Witnesseth that the said parties of the first part for and in consideration of natural love and affection and the sum of Ten Thousand Dollars in lawful money of the United States to them in hand paid by the said party of the second part at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged have granted bargained sold aliened enfeoffed releasd and conveyed and do by these presents grant bargain sell alien enfeoff release and convey unto the said party of the second part his heirs and assigns forever, All that piece or parcel of ground and premises lying and being in the City of Washington aforesaid and known and distinguished upon the ground plan of said City of Washington as lot number Ten (10) in Square numbered Three hundred and forty seven (347) being the same lot and premises sold and conveyed by indenture of Deed executed by Maria L. Nourse to Jeremiah Murphy dated the 27th day of June 1843, Recorded on the same day on Liber W. B. No. 101, folios 365, 366, & 367 one of the Land Records of Washington County D. C. and conveyed by said Jeremiah Murphy by
89 deed bearing date 25th day of May 1863, to John Walter of Washington City Recorded in Liber N. C. T. No. 8, folios 113, 114, 115, one of the Land Records of Washington County D. C. Together with all the improvements ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining and all the remainders reversions rents issues and profits thereof, and all the estate, right, title, interest claim and demand either at law or in equity or otherwise however of the said parties of the first part of in to or out of the said piece or parcel of ground and premises. To have and to hold the said piece or parcel of ground and premises and appurtenances unto the said party of the second part his heirs and assigns to their sole use benefit and behoof forever. And the said parties of the first part for themselves their heirs executors and administrators do hereby covenant promise and agree to and with the said party of the second part his heirs and assigns that they the said parties of the first part and their heirs shall and will Warrant and forever defend the said piece or parcel of ground and premises and appurtenances unto the said party of the second part his heirs and assigns from and against the claims of all persons claiming or to claim the same or any part thereof by from under or through them or either of them. And further that they the said parties of the first part and their heirs shall and will at any and at all times hereafter upon the request and at the cost of the said party of the second part his heirs or assigns make and execute all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said piece or parcel of ground and premises and appurtenances
90 unto the said party of the second part his heirs or assigns, as the said party of the second part his heirs or assigns or his counsel learned in the law shall advise devise or require. In testimony whereof the said parties of the first part have hereunto

set their hands and seals on the day and year first hereinbefore written.

JOHN WALTER. [SEAL.]
CATHARINE WALTER. [SEAL.]

Signed sealed and delivered in the presence of—

M. H. N. KENDIG.
GEO. TAYLOR.

(Stamps $20.00)

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, M. H. N. Kendig Notary Public in and for the District aforesaid in the said County do hereby certify that John Walter and Catharine Walter his wife parties to a certain deed bearing date on the Eighteenth day of June A. D. 1869 and hereto annexed personally appeared before me in the County aforesaid the said John Walter and Catharine Walter his wife being personally well known to me to be the persons who executed the said deed and acknowledged the same to be their act and deed, and the said Catharine Walter being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her acknowledged the same to be her act and deed and declared that she had willingly signed sealed and delivered the same and that she wished not to retract it.

Given under my hand and official seal this Eighteenth day
91 of June A. D. 1869.

[NOT. SEAL.] M. H. N. KENDIG,
Notary Public.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber D. No. 9, folio 372, et seq., one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 31st day of March, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

Exhibit A. H. No. 4.

Liber T. R. No. 12, Folio 370 et seq.

Recorded 30th June, 1869.

Quit-Claim.

John Walter, Jr.,
to
William Walter.

This Indenture, Made the Eighteenth day of June in the year of our Lord one thousand eight hundred and sixty-nine, between John Walter, of the City of Washington, District of Columbia, of the first part and William Walter of the same place of the second part: Witnesseth, That the said John Walter Junior, for and in consideration of the sum of one dollar in lawful money of the
92 United States, to him in hand — by the said William Walter party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released and conveyed and does by these presents grant, bargain, sell, alien, release and convey unto the said party of the second part, his heirs and assigns forever, all his one-half interest in the following described property, situate and being in the City of Washington, District of Columbia and known as Lot numbered Eight (8) in Square (377) Three hundred and seventy-seven, said Lot being the corner Lot of said Square on the Southwest corner of said Square at the intersection of E Street North with Tenth Street West. Also part of Lot (9) Nine in Square three hundred and seventy-seven (377) beginning for the same at the South west corner of said Lot Nine on Tenth Street West, running thence North with said Tenth Street Nineteen (19) feet, four (4) inches, thence parallel with E Street North Sixty-one (61) feet, One (1) inch, thence South parallel with Tenth Street (19) Nineteen feet, (4) four inches, thence West parallel with E Street North Sixty-one (61) — one (1) inch to the place of beginning. It being the same property conveyed to William Walter, party of the second part and John Walter, party of the first part by John W. Nairn of Washington, D. C. by Deed bearing date November 18th 1867 & Recorded on the 13th day of May 1869 in Liber D. No. 5, folio 423, one of the Land Records for Washington, D. C. Together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and
93 all the remainders, reversions, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand either at law or in equity, or otherwise however of the said party of the first part, of, in, to, or out of the said piece or parcel of ground and premises hereinbefore described. To have and to hold the said piece or parcel of ground and premises and appurtenances unto the

said party of the second part his heirs and assigns to their sole use, benefit and behoof forever. In Testimony —, the said John Walter, party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

JOHN WALTER, JR. [SEAL.]

Signed, sealed and delivered in the presence of
M. H. N. KENDIG.
GEORGE TAYLOR.

(Stamp- $10.00/100)

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, M. H. N. Kendig, Notary Public in and for the District aforesaid in said County, Do Hereby Certify that, John Walter, Jr., party to a certain Deed bearing date on the Eighteenth day of June A. D. 1869 and hereto annexed, personally appeared before me in my County aforesaid, the said John Walter, Jr., being personally well known to me to be the person who executed the said Deed, and acknowledged the same to be his act and deed. Given under my hand and official seal this Eighteenth day of June A. D. 1869.

[NOTARIAL SEAL.] M. H. N. KENDIG,
Notary Public.

94 OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber T. R. No. 12, folio 370, et seq., one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this Office this 1st day of April, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

EXHIBIT A. H. No. 5.

Liber 2516, Folio 61 et seq.

Recorded Aug. 18, 1900, 10 A. M.

Deed.

JOHN WALTER, SENIOR
to
FREDERICA PAULINE CROW.

This Indenture made this 18th day of August in the year of our Lord one thousand nine hundred, by and between John Walter, Senior, of the City of Washington, District of Columbia, party of the

first part and Frederica Pauline Crow, of the same place party of the second part: Witnesseth, that the party of the first part, for and in consideration of Ten dollars, lawful money of the United States of America, to him in hand paid by the party of the second part, receipt of which, before the sealing and delivery of these presents is hereby acknowledged, has given, granted, bargained and sold, aliened, enfeoffed, released and conveyed, and confirmed and
95 does by these presents give, grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the party of the second part, her heirs and assigns forever, the following described land and premises situate, lying and being in the City of Washington, District of Columbia, and distinguished as lot numbered seventeen (17) in Einolf's subdivision of a part of lot four (4) in square numbered Three hundred and forty seven (347), or more fully described as follows: Beginning for the same at the Southeast corner of said lot four and running thence west with the line of E Street Eighteen (18) feet thence North Seventy four (74), feet thence East Eighteen (18) feet, thence South Seventy-four (74) feet to the place of beginning; also the right of way and use in common of an alley three feet wide situate in the rear of the residence of said lot four commencing seventy-one feet from the South west corner of said lot on a point on Eleventh St., and running thence Thirty-two feet east and thence North three feet; also part of original lot numbered three (3) in square numbered seven hundred and ninety one (791), beginning for the same at the Southwest corner of said lot numbered three (3) running thence in a north easterly direction along the line of North Carolina Avenue Fifty six feet (56 ft.) to a point four (4) feet; seven (7) inches west of the south east corner of said lot numbered three (3), thence northwesterly in a line parallel to the east line of said lot three (3) to a point in the south line of sub lot "M" in said square; thence west along the South line of sub lots "M" and "N" in said square to a point in the north line of sub lot "P" in said square thence southwesterly along the
96 North lines of sub lots "P" and "O" in said square to a point in the west line of said original lot three (3) distant eighty five (85) feet and one (1) inch south from the south line of "C" Street, thence southeasterly along the west line of said lot three (3) eighty three (83) feet and eight (8) inches to the point of beginning; embracing all of sub lots "O", "P", and "Q" in Lobsiger subdivision as recorded in the office of the Surveyor for the District of Columbia in Book "H. D. C." page 142 and seventeen (17) feet front on North Carolina Ave. of Said original lot numbered three (3), together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however of the party of the first part, of, in to or out of the said land and premises. To have and to hold the said land, premises and appurtenances, unto and to the only use of the party of the second part, her heirs and assigns forever. Subject however to this express reservation: That the said party of the first part does hereby expressly reserve unto

himself for and during the period of his natural life, a life interest in and to the premises herein described and all the rests, issues and profits thereof to have and apply for his sole use and benefit. And the said John Walter Senior, for himself and for his heirs, executors and administrators, do- hereby covenant and agree to and with the party of the second part, her heirs and assigns, that he the party of the first part and his heirs, shall and will warrant and forever defend
the said land and premises and appurtenances unto the party
97 of the second part, her heirs and assigns from and against
the claims of all persons claiming or to claim the same, or any part thereof, or interest therein, by, from, under or through him or them. And further, that the party of the first part and his heirs shall and will at any and all times hereafter, upon the request and at the cost of the party of the second part, her heirs and assigns, make and execute all such other Deed or Deeds, or other assurance in law, for the more certain and effectual conveyance of the said land and premises and appurtenances unto the party of the second part, her heirs or assigns as the party of the second part her heirs or assigns or her or their counsel learned in the law shall advise, devise or require. In testimony whereof, the party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

JOHN WALTER, SR. [SEAL.]

Signed, sealed and delivered in the presence of
LOUIS SCHADE.

DISTRICT OF COLUMBIA, *To wit:*

I, Louis Schade, a Notary Public in and for the said District of Columbia, do hereby certify that John Walter, Senior party to a certain Deed, bearing date on the 18th day of August, A. D. 1900, and hereunto annexed, personally appeared before me in the said District of Columbia, the said —— being personally well known to me as the person who executed the said deed, and acknowledged
the same to be his act and deed. Given under my hand and
98 official seal this 18th day of August, A. D. 1900.

[NOTARIAL SEAL.] LOUIS SCHADE,
Notary Public.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an Instrument as recorded in Liber 2516, Folio 61 et seq., one of the Land Records of the District of Columbia.

In testimony whereof, I have hereunto set my hand and affixed the seal of this office this 20th day of April, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

EXHIBIT A. H. No. 6.

Liber 2516, Folio 65 et seq.

Recorded 18th Aug., 1900, 10:01 A. M.

Deed.

JOHN WALTER, SR.,
to
LAWRENCE HUGO WALTER.

This Indenture made this 18th day of August in the year of our Lord one thousand nine hundred, by and between John Walter, Senior, of the City of Washington, District of Columbia, party of the first part and Lawrence Hugo Walter of the same place party of the second part:

Witnesseth, that the party of the first part for and in consideration of Ten dollars lawful money of the United States of America to him in hand paid by the party of the second part, receipt
99 of which, before the sealing and delivery of these presents, is hereby acknowledged, has given, granted, bargained and sold, aliened enfeoffed, released, conveyed and confirmed and does by these presents give, grant, bargain and sell alien, enfeoff, release, convey and confirm unto the party of the second part his heirs and assigns forever the following described land and premises, situate, lying and being in the City of Washington, District of Columbia, and distinguished as lot numbered Thirteen (13) in Square numbered Three hundred and forty seven (347) otherwise known as premises Nos. 520 and 522 Tenth St., N. W. together with all and singular the improvements, ways, easements, rights privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity or otherwise however, of the party of the first part, of, in to or out of the said land and premises. To have and to hold the said land, premises and appurtenances unto and to the only use of the party of the second part his heirs and assigns forever. Subject, however to this express reservation: That the said party of the first part does hereby expressly reserve unto himself for and during the period of his natural life a life interest in and to the land and premises herein described, and all the rents, issues and profits thereof to have and apply for his sole use and benefit. And the said John Walter, Senior, for himself and for his heirs, executors and administrators, do hereby covenant and agree to and with the party of the second part, his heirs and assigns that he the party of the first part and his heirs shall and will warrant and forever defend the
100 said land and premises and appurtenances unto the party of the second part his heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, or interest thereon, by, from, under or through him or

them. And further that the party of the first part and his heirs shall and will at any and all times hereafter, upon the request and at the cost of the party of the second part his heirs and assigns, make and execute all such other Deed or Deeds, or other assurance in law, for the more certain and effectual conveyance of the said land and premises and appurtenances unto the party of the second part, his heirs or assigns as the party of the second part, his heirs or assigns, or his or their counsel learned in the law shall advise, devise or require. In testimony whereof, the party of the first part has hereunto set his hand and seal on the day and year first herein before written.

JOHN WALTER, SR. [SEAL.]

Signed, sealed and delivered in the presence of
LOUIS SCHADE.

DISTRICT OF COLUMBIA, *To wit:*

I, Louis Schade, a Notary Public in and for the said District of Columbia, do hereby certify that John Walter, Senior, party to a certain Deed bearing date on the 18th day of August A. D. 1900, and hereunto annexed, personally appeared before me in the said District of Columbia, the said — being personally well known to me as the person who executed the said Deed, and acknowledged
101 the same to be his act and deed. Given under my hand and official seal, this 18th day of August, A. D. 1900.

[NOTARIAL SEAL.] LOUIS SCHADE,
Notary Public.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an Instrument as recorded in Liber 2516, folio 65 et seq., one of the Land Records of the District of Columbia.

In Testimony whereof, I have hereunto set my hand and affixed the seal of this Office this 20th day of April, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

EXHIBIT A. H. No. 7.

Liber 2516, Folio 68 et seq.

Recorded 18th Aug., 1900, 10:02 A. M.

Deed.

JOHN WALTER, SR.,
to
CARL OSCAR WALTER.

This Indenture made this 18th day of August in the year of our Lord one thousand nine hundred by and between John Walter,

Senior, of the City of Washington, District of Columbia, party of the first part, and Carl Oscar Walter, of the same place, party of the second part, Witnesseth, that the party of the first part for and in consideration of Ten dollars, lawful money of the United
102 States of America, to him in hand paid by the party of the second part, receipt of which, before the sealing and delivery of these presents is hereby acknowledged, has given, granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed and does by these presents give, grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the party of the second part, his heirs and assigns forever, the following described land and premises situate lying and being in the City of Washington, District of Columbia and distinguished as lot numbered "L" in Patterson's subdivision of Original Lot numbered sixteen (16) in Square numbered Three hundred and seventy-eight (378) as per plat recorded in the Office of the Surveyor of the District of Columbia in Liber "N K" folio 303, also lot numbered Twenty-six (26) in J. B. Kibbey's et al. subdivision of Square numbered Five hundred and seventy-one (571) as per plat recorded in the office of the Surveyor of the District of Columbia, in Liber "B" folio 160; also the west half of sub lot "M" in Square numbered Three hundred and seventy eight (378) together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim either at law or in equity or otherwise however of the part- of the first part, of, in to or out of the said land and premises, To have and to hold the said land premises and appurtenances, unto and to the only use of the party of the second part, his heirs and assigns forever. Subject however to this express reservation: That the said *said* party of the first part does hereby
103 expressly reserve unto himself, for and during the period of his natural life, a life interest in and to the land and premises herein described and all the rents, issues and profits thereof to have and apply for his sole use and benefit. And the said John Walter, Senior, for himself and for his heirs, executors and administrators do hereby covenant and agree to and with the party of the second part, his heirs and assigns, that he, the party of the first — and his heirs shall and will warrant and forever defend the said land and premises and appurtenances unto the party of the second part, his heirs and assigns from and against the claims of all persons claiming or to claim the same or any part thereof, or interest therein, by, from, under or through him or them. And further, that the party of the first part and his heirs shall and will at any and all times hereafter, upon the request and at the cost of the party of the second part, his heirs and assigns, make and execute all such other Deed or Deeds, or other assurance in law for the more certain and effectual conveyance of the said land and premises and appurtenances unto the party of the second part his heirs or assigns as the party of the second part his heirs or assigns, or his or their counsel learned in the law shall advise, devise or require. In

testimony whereof, the party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

JOHN WALTER, SR. [SEAL.]

Signed, sealed and delivered in the presence of
LOUIS SCHADE.

104 DISTRICT OF COLUMBIA, *To wit:*

I, Louis Schade, a Notary Public in and for the said District of Columbia do hereby certify that John Walter, Senior, party to a certain Deed bearing date on the 18th day of August, A. D. 1900, and hereunto annexed, personally appeared before me, in the said District of Columbia the said — being personally well known to me as the person who executed the said Deed and acknowledged the same to be his act and deed. Given under my hand and official seal, this 18th day of August A. D. 1900.

[NOTARIAL SEAL.] LOUIS SCHADE,
Notary Public.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 2516, Folio 68 et seq., one of the Land Records of the District of Columbia.

In testimony whereof, I have hereunto set my hand and affixed the seal of this Office this 20th day of April, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

105 EXHIBIT A. H. No. 8.

Liber 2516. Folio 71 et seq.

Recorded 18th Aug., 1900, 10:03 A. M.

Deed.

JOHN WALTER, SR.,
to
ADOLPH WALTER.

This Indenture made this 18th day of August in the year of our Lord one thousand nine hundred, by and between John Walter, Senior, of the City of Washington, District of Columbia party of the first part, and Adolph Walter, of the same place, party of the second part. Witnesseth, that the party of the first part, for and in consideration of Ten Dollars lawful money of the United States of America to him in hand paid by the party of the second part, receipt of which before the sealing and delivery of these presents is hereby acknowledged, has given, granted, bargained and sold, aliened, en-

feoffed, released, conveyed and confirmed, and do- by these presents give, grant, bargain and sell, alien, enfeoff release, convey and confirm unto the party of the second part his heirs and assigns forever the following described land and premises, situate, lying and being in the City of Washington, District of Columbia and distinguished as The East one half (½) of original lot numbered Eighteen (18) in Square numbered one hundred and sixty eight (168) fronting on Pennsylvania Ave., between Seventeenth and Eighteeth Streets, West. Also the north portion of lot Thirty eight (38) of Square one hundred and sixty eight (168) beginning at the northwest corner of said lot thirty eight (38) thence South three and 93/100 (3.93) feet thence East five and 42/100 (5.42) feet, thence North three and 09/100 (3.09) feet, thence North westerly to the
106 place of beginning, together with the North Three and 93/100 (3.93) feet of each of lots numbered Thirty nine (39) Forty (40) and forty one (41) with their respective widths of said square one hundred and sixty eight (168) according to the records of the Surveyor's office of the District of Columbia, subject however to all those certain conditions stipulations and reservations contained in a deed from George F. Dearing et ux. to the said John Walter, Sr. bearing date on the 23rd day of April, A. D. 1890 and recorded April 28, A. D. 1890, in Liber No. 1482 folio 156 et seq. of the land Records of the District of Columbia, together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however of the party of the first part, of, in to or out of the said land and premises. To have and hold the said land, premises and appurtenances unto and to the only use of the party of the second part, his heirs and assigns forever. Subject, however, to this express reservation. That the said party of the first part does hereby expressly reserve unto himself for and during the period of his natural life, a life interest in and to the premises herein described, and all the rents, issues and profits thereof to have and apply for his sole use and benefit. And the said John Walter, Senior, for himself and for his heirs, executors and administrators, do hereby covenant and agree, to and with the party of the second part, his heirs and assigns, that he the party of the first part and
his heirs shall and will warrant and forever defend the said
107 land and premises and appurtenances unto the party of the second part his heirs and assigns from and against the claims of all persons claiming or to claim the same or any part thereof, or interest therein, by, from, under or through him or them. And further, that the party of the first part and his heirs shall and will at any and all times hereafter upon the request and at the cost of the party of the second part his heirs and assigns, make and execute all such other Deed or Deeds or other assurance in law, for the more certain and effectual conveyance of the said land and premises and appurtenances, unto the party of the second part his heirs or assigns as the party of the second part, his heirs or assigns or his or their counsel learned in the law shall advise, devise or require. In Tes-

timony Whereof, the party of the first part has hereunto set his hand and [illegible] the day and year first hereinbefore written.

JOHN WALTER, SR. [SEAL.]

[illegible] sealed and delivered in the presence of
LOUIS SCHADE.

DISTRICT OF COLUMBIA, *To wit:*

I, Louis Schade a Notary Public in and for the said District of Columbia, do hereby certify that John Walter, Senior party to a certain Deed bearing date on the 18th day of August, A. D. 1900 and hereunto annexed personally appeared before me in the said District of Columbia, the said John Walter Senior, being personally well known to me as the person who executed the said Deed
108 and acknowledged the same to be his act and deed. Given under my hand and official seal, this 18th day of August A. D. 1900.

[NOTARIAL SEAL.]

LOUIS SCHADE,
Notary Public, D. C.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified Copy of an Instrument as recorded in Liber 2516, folio 71 et seq., one of the Land Records of the District of Columbia.

In testimony whereof, I have hereunto set my hand and affixed the seal of this office this 20th day of April, A. D. 1908.

[SEAL.]

R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

109 EXHIBIT A. H. No. 9.

Liber D. 9, Folio 374 et seq.

Recorded June 30, 1869.

Deed.

WILLIAM WALTER
to
JOHN WALTER, SR.

This Indenture, Made this Eighteenth day of June in the year of our Lord one thousand eight hundred and sixty-nine, between William Walter, of the City of Washington, of the first part and John Walter, Senior of the same place of the second part: Witnesseth, that the said party of the first part for and in consideration of the sum of One dollar in lawful money of the United States to him in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released and conveyed and does by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said party of

the second part, his heirs and assigns, forever, all that certain piece or parcel of land situate lying and being in the City of Washington, in the District of Columbia and known and distinguished as all that part of Lots numbered Five and Six in Square numbered Three hundred and twenty-three (323), beginning at a point in the line of twelfth (12th) Street West forty (40) feet, eleven and a half (11½) inches South from the Northwest corner of said Lot Six, and running thence east at right angles with said Street Ninety-five feet (95) one (1) inch to the line of an alley, thence in a Southerly direction along the line of said alley across Lots Six, (6) and Five, (5) to a point Ten (10) feet West from the Southeast corner of said Lot Five (5), thence West, part with one line of lot five to
110 Twelfth Street ninety (90) feet, One (1) inch, thence North with the line of said Street forty feet, eleven and a half inches to the place of beginning, containing 3833 feet 9 inches more or less of ground, the whole being the same property conveyed by and bearing date the 24th day of February 1865—from Joseph Nathan and his wife Catharine to William Walter. Together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof and all the estate, right, title, interest, claim and demand either at law or in equity or otherwise however of the said party of the first part of, in, to, or out of the said piece or parcel of ground and premises. To have and to hold the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, his heirs and assigns to their sole use, benefit and behoof forever. And the said party of the first part for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree to and with the said party of the second part, his heirs and assigns, that he the said party of the first part and his heirs shall and will warrant and forever defend the said piece or parcel of ground and premises and appurtenances unto the party of the second part, his heirs and assigns from and against the claims of all persons claiming or to claim the same or any part thereof, by, from, under or through him or them. And further, that he the said party of the first part and his heirs shall and will at any and at all times hereafter, upon the request and at the cost of the said party of the second part, his heirs or assigns, make and execute all such other Deed or Deeds or
111 other assurance in law for the more certain and effectual conveyance of the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, his heirs or assigns as the said party of the second part, his heirs or assigns, or his counsel learned in the law shall advise, devise or require. In testimony whereof, the said part of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

WILLIAM WALTER. [SEAL.]

Signed, sealed and delivered in the presence of
M. H. N. KENDIG.
GEO. TAYLOR.

(Stamp 5 cts.)

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, M. H. N. Kendig, Notary Public in and for the District aforesaid in the said County, Do Hereby certify that William Walter party to a certain Deed bearing date on the Eighteenth day of June A. D. 1869 and hereto annexed, personally appeared before me in the County aforesaid, the said William Walter being personally well known to me to be the person who executed the said Deed, and acknowledged the same to be his act and deed. Given under my hand and Official seal this Eighteenth day of June A. D. 1869.

[NOTARIAL SEAL.] M. H. N. KENDIG,
Not. Public.

112 OFFICE OF THE RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber D 9, folio 374, et seq., one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this Office this 26th day of May, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

113 *Stipulations and Record-Evidence on Behalf of Co-defendants.*

Filed August 14, 1908.

In the Supreme Court of the District of Columbia.

In Equity. No. 27459.

CATHARINE M. S. FROSCH
vs.
WILLIAM WALTER et al.

At the request of Hugh T. Taggart, Esq., Solicitor for the defendants, Ida S. Monday and others, I have this day fixed Saturday next, May 23, 1908, at 11 o'clock in the forenoon of that day, and my office, No. 426 Fifth street, Northwest, in the city of Washington, District of Columbia, as the time and place when and where testimony on behalf of said defendants in the above entitled cause will be taken before me.

ALBERT HARPER,
Examiner in Chancery.

May 20, 1908.

To Messrs. Barnard & Johnson, Solicitors for Complainant; and Andrew A. Lipscomb, Michael J. Colbert, O. Metzerott, Archer & Smith, and Henry W. Sohon, Solicitors for respective defendants:

Take notice that at the time and place fixed in the foregoing order I shall take testimony on behalf of said defendants in the above entitled cause.

HUGH T. TAGGART,
Solicitor for the Defendants,
Ida S. Monday and others.

May 20, 1908.

114 Service acknowledged this 20th day of May, 1908.

BARNARD & JOHNSON,
Sol'rs for Compl'ts.
H. W. SOHON, *Trustee.*
JAMES B. ARCHER,
For Smith & Metzerott.
ANDREW LIPSCOMB,
Sol. for Wm. Walter.
M. J. COLBERT.

* * * * * * *

Be it remembered That on the 23rd and 29th days of May, 1908, pursuant to foregoing notice and adjournment, before me, Albert Harper, an Examiner in Chancery of the Supreme Court of the District of Columbia, on behalf of the defendants Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, and Mabel D. King, in the above entitled cause, the following record evidence was offered and filed, namely:

MAY 23, 1908, SATURDAY—11 o'clock a. m.

Met pursuant to foregoing notice.

Appearances: Messrs. Ralph P. Barnard and Benjamin F. Leighton, Solicitors for complainant; Andrew A. Lipscomb, Esq., Solicitor for the defendant, William Walter; also John J. Hamilton, Esq., representing Michael J. Colbert, Esq., Solicitor for the defendants, Oscar Walter and others; and also the Examiner, Albert Harper, Esq.

115 Whereupon: owing to detention by another professional engagement of Hugh T. Taggart, Esq., Solicitor for the defendants, Ida S. Monday and others, adjourned to—

MAY 29, 1908, FRIDAY—2 o'clock p. m.

Met pursuant to adjournment.

Appearances: Messrs. Ralph P. Barnard and Benjamin F. Leighton, Solicitors for complainant; Hugh T. Taggart, Esq., Solicitor for the defendants, Ida S. Monday and others; Michael J. Colbert, Esq., Solicitor for the defendants, Oscar Walter and others; and also the Examiner, Albert Harper, Esq.

Whereupon—

It is stipulated and agreed, by and between the Solicitors for the respective parties to this cause, here present, that the two certificates signed by Paul A. Menzel, Pastor of the Concordia German Lutheran Church in the City of Washington, D. C., dated May 15, 1908, and here produced by Hugh T. Taggart, Esq., Solicitor for the defendants, Ida S. Monday and others, may be admitted in evidence as establishing the fact that the records of said Concordia German Lutheran Church contain an entry of the marriage in said church of John Walter to Catherine Huber, on April 30, 1863, and also contain an entry of the burial of Catherine Walter, wife of John Walter, Sen., on November 9, 1872; said certificates to have the same force and effect, but subject to any objection to the competency of said original records, the production of which is waived.

116 (NOTE.—Said two certificates are herewith filed in evidence marked respectively Exhibits P. A. M. Nos. 1 and 2, and hereto attached.)

And it is further stipulated and agreed, by and between the Solicitors for the respective parties to this cause, here present, that the family Bible now produced by Hugh T. Taggart, Esq., Solicitor for said defendants, Ida S. Monday and others, showing the births of the children of Barbara King, deceased, contains the following entry, namely: "Ida Sophia King was born June 15th and baptized York Pa.
November the 9th 1869," the words "York Pa" being interlined and in a different handwriting from the rest of the writing in said entry; and that said entry, copied herein by the Examiner as appearing in said Bible shall have the same force and effect and be subject to any objection to the competency of the original thereof.

ALBERT HARPER,
Examiner.

And, thereupon, in this connection, and at the request of the Solicitors for the complainant, it is further stipulated and agreed, by and between the Solicitors for the respective parties in this cause, here present, that the certificate of Paul A. Menzel, at present Pastor of the Concordia German Lutheran Church of the City of Washington, D. C., showing the entries in the records of the said church of the births and baptisms of John Walter, Junior, William Walter, Barbara Walter deceased, who intermarried with Albert King, George Walter, and Catherine M. S. Walter, now Catherine

117 M. S. Frosch, the complainant, children of John Walter, Senior, deceased, may be admitted herein as evidence of the facts stated in said certificate, which is to have the same force and effect, but subject to any objection to the competency of said original records, the production of which is waived; which certificate, to be hereafter obtained and produced, is herewith filed in evidence, now for then, marked exhibit P. A. M. No. 3, and hereto attached.

ALBERT HARPER,
Examiner.

And now, this 27th day of July, 1908, come Ralph P. Barnard, Esq., of Solicitors for complainant, Hugh T. Taggart, Esq., Solicitor for Ida S. Monday and her co-defendants, and Michael J. Colbert, Esq., Solicitor for Pauline Crow and her co-defendants, and stipulate and agree that February 2, 1850, is the date of the birth of Barbara Walter, deceased, who intermarried with Albert King, and is the mother of the defendants, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret A. Collins, Caroline M. King, Eva A. King and Mabel D. King.

ALBERT HARPER, *Examiner.*

NOTE.—The foregoing stipulations were shown by the Examiner to those of the Solicitors for the defendants not present at the time of the making thereof, and were assented to by them; and Messrs. Andrew A. Lipscomb, James B. Archer, John Lewis Smith, Oliver Metzerott and Henry W. Sohon, announce that they have no
118 testimony to take on behalf of the certain defendants whom they represent herein.

ALBERT HARPER, *Examiner.*

EXHIBIT P. A. M. No. 1.

WASHINGTON, D. C., *May 15,* 1908.

I, Paul A. Menzel, at present, pastor of the Concordia German Lutheran Church in the City of Washington, D. C., do hereby certify that in the records of the said church there is an entry of the marriage of John Walter to Catherine Huber on April 30, 1863.

[CORPORATE SEAL.] PAUL A. MENZEL.

EXHIBIT P. A. M. No. 2.

WASHINGTON, D. C., *May 15,* 1908.

I, Paul A. Menzel, at present, pastor of the Concordia German Lutheran Church in the City of Washington, D. C., do hereby certify that in the records of the said church there is an entry of the burial of Catherine Walter wife of John Walter sen. on November 9th 1872.

[CORPORATE SEAL.] PAUL A. MENZEL.

119 EXHIBIT P. A. M. No. 3.

WASHINGTON, D. C., *July* 25, 1908.

I, Paul A. Menzel, at present Pastor of the Concordia German Lutheran Church in the city of Washington, D. C., do hereby certify that in the records of the said Church the following entries appear, viz:

John Walter, Junior, born October 2, 1844; baptized October 27, 1844.

William (Nickolaus) Walter, born March 12, 1847; baptized August 29, 1847.

George (Nickolaus) Walter, born April 30, 1851; baptized July 22, 1851.

Catharine Magdalene Sophia Walter, born October 25, 1857; baptized January 3, 1858.

And that there appears in the records of the said Church no entry relating to the birth and baltism of Barbara Walter.

[CORPORATE SEAL.] PAUL A. MENZEL.

120 *Depositions for Certain Co-Defendants.*

Filed August 14, 1908.

In the Supreme Court of the District of Columbia.

In Equity. No. 27459.

CATHERINE M. S. FROSCH
vs.
WILLIAM WALTER et al.

At the request of Michael J. Colbert, Esq., Solicitor for the defendants, Oscar Walter, Adolph Walter, Hugo Walter, and Pauline Crow, I have this day fixed Friday next, June 5, 1908 at two o'clock in the afternoon of that day, and my office, No. 426 Fifth Street, Northwest, in this city of Washington, District of Columbia as the time and place when and where testimony on behalf of said defendants in the above entitled cause will be taken before me.

ALBERT HARPER,
Examiner in Chancery.

June 2, 1908.

To Messrs. Barnard & Johnson, Solicitors for Complainant, and Andrew A. Lipscomb, Hugh T. Taggart, O. Metzerott, Archer & Smith, and Henry T. Sohon, Solicitors for the respective Defendants:

Take notice that at the time and place, fixed in the foregoing order I shall take testimony on behalf of the said defendants in the above entitled cause.

M. J. COLBERT,
Solicitor for Defendants Pauline Crow and Others.

June 2, 1908.

121 Service acknowledged this 2nd day of June, 1908.

BARNARD & JOHNSON.
H. W. SOHON.
H. T. TAGGART,
Sol'r for Ida S. Monday et al.
ARCHER & SMITH.
O. L. METZEROTT,
By ARCHER.
ANDREW LIPSCOMB.

* * * * * * *

Be it remembered That at an examination of witnesses begun and held on the 5th day of June, 1908, pursuant to foregoing notice, personally appeared before me, Albert Harper, an Examiner in Chancery of the Supreme Court of the District of Columbia, the within named Pauline Crow, produced as a witness of lawful age for and on behalf of herself and co-defendants Oscar Walter, Adolph Walter and Hugo Walter, children of John Walter, Senior, by his third wife, Wilhelmina Walter, and also Henry Sohon on call (at the request of Solicitors for complainant) of Solicitors for said defendants, who, being first duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth, touching the matter at issue in the above entitled cause, did depose and say as follows:

JUNE 5, 1908, FRIDAY—2 o'clock p. m.

Met pursuant to foregoing notice.

Appearances: Messrs. Ralph P. Barnard and Benjamin F. Leighton, Solicitors for the complainant, who is present; Hugh T. Taggart, Esq., Solicitor for the defendants, Ida S. Monday, Emma
122 A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, and Mabel D. King; also the Examiner, Albert Harper, Esq.; and Michael J. Colbert, Esq., Solicitor for the defendants Oscar Walter, Adolph Walter, Hugo Walter, and Pauline Crow, the last of whom—

PAULINE CROW, being produced as a witness of lawful age for and on behalf of herself and her said co-defendants, and being first duly sworn, deposes and says:

Direct examination.

By Mr. COLBERT:

Q. You are a co-defendant with your brothers, Oscar Walter, who is present, Adolph Walter and Hugo Walter, in this cause? A. Yes.

Q. Where do you reside? A. At No. 1013 E Street, Northwest, in this City.

Q. Who is your father? A. John Walter, Senior.

Q. He is the John Walter, Senior, referred to in these proceedings, and is now deceased? A. Yes.

Q. You and your brothers are the children of John Walter, Senior, by his third wife, Wilhelmina Walter? A. Yes.

Q. Who is the eldest of the children of your father, John
123 Walter, Senior, by his third wife, Wilhelmina Walter? A. My brother, Oscar Karl Walter.

Q. Where and when was Oscar Karl Walter born? A. At No. 1011 E Street, Northwest, on the 22nd of February, 1874.

Q. Who is the next child of your father, John Walter, Senior, by his third wife, Wilhelmina Walter, and when born? A. Adolph Gotlieb Walter; he was born May 17, 1876.

Q. Who is the third child of your father, John Walter, Senior, by his third wife, Wilhelmina Walter, and when born? A. I am the third child of that marriage; and I was born August 3, 1879.

Q. What is your full maiden name? A. Pauline Frieda Walter.

Q. Who is the youngest and fourth child of your father, John Walter, Senior, by his third wife, Wilhelmina Walter, and when born? A. Hugo Lawrence Walter; he was born July 21, 1881.

Q. Are those the only children of your father, John Walter, Senior, by his third wife, Wilhelmina Walter? A. Yes.

Q. There were no other children than you four born of that marriage? A. Not that I know of.

Q. None others, at all events, who survived their infancy?

124 A. No. *A. No.*

Q. Have you read the testimony taken the 25th of April last, on behalf of the complainant in this cause? A. Yes.

Q. Will you state what, if any, inaccuracy you find therein? A. Well, there are several inaccuracies; for instance, my brother Adolph does not own the property No. 1716 Pennsylvania Avenue, Northwest; he owns three other pieces.

Q. Did he ever own premises No. 1716 Pennsylvania Avenue, Northwest, in this City? A. No, sir; my father owned it.

Mr. LEIGHTON: It was in the name of your brother Adolph, was it not?

WITNESS: Yes, but it has not been in his name for two years; my father turned it over for him.

Mr. LEIGHTON: But it was in the name of your brother Adolph before the last two years.

WITNESS: Yes.

Mr. BARNARD: He sold it?

WITNESS: Yes, sir; my father sold it for him.

Q. Your father turned it over for your brother Adolph? A. Yes, sir; he sold it for my brother Adolph.

Q. Your brother Adolph got the benefit of the proceeds of the sale of that property? A. Yes.

Q. What other inaccuracies if any, do you find in that

125 testimony? A. That is all I can remember now; well, as to the house No. 1013 E street, northwest, testified to as leading out into 10th Street, when it leads out into 11th Street, in to a three-foot alley on 11th Street.

Mr. BARNARD: That inaccuracy appears in my question to the witness Owen at page 6 of the testimony taken on the 25th of April last, on behalf of the complainant; the latter part of it should read, "together with the right of way in the rear of 11th Street," instead of "in the rear of 10th street;" and I now correct it.

Q. Is there any other inaccuracy in that testimony? A. The Concordia German Lutheran Church is located on the corner of 20th and G Street, Northwest, instead of 22nd Street and Pennsylvania Avenue, as stated in that testimony.

Q. Well, Mrs. Crow, do you think of any other inaccuracy in that testimony? A. None other that I remember now. No, I think that is all.

Cross-examination.

By Mr. BARNARD:

Q. You and your brothers all received these deeds (Exhibits A. H. Nos. 5 to 8 inclusive, to the said testimony for the complainant in this cause) from your father, John Walter, Senior, referred to in these proceedings? A. Yes, sir; we all have our deeds.

Q. And do you each have possession of the pieces of property conveyed to you, respectively, by those deeds? A. Yes, sir.

126 Q. Excepting your brother, Adolph, who sold the property thus conveyed to him, and invested the proceeds therefrom in other property? A. Yes, sir.

PAULINE F. CROW.

Subscribed and sworn to before me this 5th day of June, 1908.

ALBERT HARPER,
Examiner.

Mr. TAGGART: While I suppose certain deeds offered on behalf of the complainant are in evidence for all purposes in this cause, yet, to avoid any question on that point, I here offer those deeds in evidence on behalf of Ida S. Monday and her co-defendants, children of Barbara King, deceased, namely: the deed from Joseph Nathan to William Walter, marked Exhibit A. H. No. 1; that from John W. Nairn to John Walter and William Walter, marked Exhibit A. H. No. 2; that from William Walter to John Walter, Senior, marked Exhibit A. H. No. 9; that from John Walter, Junior, to William Walter, marked Exhibit A. H. No. 4; from John Walter, Senior, to John Walter, Junior, marked Exhibit A. H. No. 3; and the deed in trust from John Walter, Senior, to John Walter, Junior, marked complainant's Exhibit No. 1 to the bill of complaint in this cause.

ALBERT HARPER,
Examiner.

127 Whereupon HENRY W. SOHON, being produced as a witness of lawful age, on call of the Solicitor for Pauline Crow and her co-defendants, at the request of the Solicitors for the complainant, and being first duly sworn, deposes and says:

Direct examination.

By Mr. COLBERT:

Q. You are named, Mr. Sohon, as one of the defendants to this cause? A. Yes.

Q. What connection have you with the estate of John Walter, Senior, mentioned in these proceedings? A. I am the Executor of his last will and testament.

Q. Did he leave any real estate at the time of his death? A. He left no real estate.

Q. He had disposed of all of his real estate in his lifetime? A. He conveyed during his lifetime all his real estate to his children, reserving to himself life estates therein.

Q. So that, the only estate he had left at the time of his death is the personalty? A. Yes, sir; he left no real estate, only personalty belonging to his estate.

Mr. TAGGART: I object to this testimony as being immaterial.

H. W. SOHON.

128 Subscribed and sworn to before me this 5th day of June, 1908.

ALBERT HARPER,
Examiner.

129 *Opinion.*

Filed December 31, 1908.

In the Supreme Court of the District of Columbia.

No. 27459. Equity.

CATHERINE M. S. FROSCH
vs.
WILLIAM WALTER et al.

The purpose of the bill in this case is to obtain the construction of a deed in trust given by John Walter, Sr., on June 18, 1869, whereby certain real estate in this District, and certain notes or moneys due him, were conveyed or assigned to John Walter, Jr., in trust for the grantor for life, and at his death to be conveyed, in separate parcels, to three of his children, or their heirs. The particular clause of the said deed which is called in question is as follows:

"In the event of the death of any one of the above mentioned children of the said John Walter, Sr., to wit, Catherine, George, and Barbara, without leaving any child or children, or any issue of any child or children, then, and in that case, that the property held in trust by said trustee, party of the second part, for the benefit of the party then dying without issue, shall be sold by said party of the second part, after the death of John Walter, Sr., and the proceeds paid over in equal portions to the surviving children of the said John Walter, Sr., party of the first part."

At the time this deed of trust was made, John Walter, Sr., the grantor, was the owner of several pieces of real estate in this District, and had five children living. The two older children were John Walter, Jr., and William Walter. They were both over twenty-one years of age at the date of this deed, and he made provision for them by conveying other property to each of them in fee, independently of the said provision made for the three younger children,
130 who were minors at that time, namely Barbara, George N., and the complainant herein.

George N. Walter died, unmarried, and without issue, on May 14, 1892. Thereafter Barbara, who had married Albert King, died on

August 23, 1904, leaving surviving her eight children, who are made defendants herein.

John Walter, Jr., the trustee, resigned his trust years ago, and died on November 17, 1906, leaving two children, Henry C. and Frederick L. Walter, also defendants herein; and on April 12, 1907, John Walter, Sr., the grantor in said deed of trust, died, leaving William Walter and Catherine M. S. Frosch, two children by his first wife, and Pauline Freda Crow, Hugo Lawrence Walter, Oscar Carl Walter, and Adolph Gotlieb Walter, children of his third wife, surviving him, besides his grandchildren, the said children of John Walter, Jr., and Barbara Walter King, deceased.

At the time the deed of trust was made, John Walter, Sr., the grantor, was living with his second wife. She died in November 1872, and he married Wilhelmina Aufrecht in February 1873.

His second wife, Catherine Huber, was a widow at the time he married her, having children by her first husband; and by the deed of trust it was provided that the trustee should pay out of the rents of the real estate conveyed, the sum of $2,000, to her said children, within one year after his death.

The bill avers that it was the intention of the grantor by said deed of trust to provide exclusively therein for his said three children, Catherine, Barbara and George.

131 The prayers of the bill are in the alternative. First, that if the court should be of the opinion that the complainant is entitled to all of the proceeds of the sale of the real estate described, being that portion that was to go to George N. Walter, then that the trustee, Henry W. Sohon be decreed to convey the property in fee simple to her, after full payment of the said $2,000 charged on all the trust estate for the benefit of the children of the second wife of said John Walter, Sr., and second, if the court should be of the opinion that the complainant and her brother, William Walter, are entitled in equal shares to said property, then that the trustee be decreed to sell the property, and divide the proceeds, after full payment of the said $2,000; and that the defendant, Henry W. Sohon, trustee, be required to state his accounts as such herein; and a general prayer for other and further relief.

The children of Barbara King, deceased, file answers claiming that they should have one half of the said property; William Walter answers, claiming one half of the property; and the children of John Walter, Jr., claim a share; and the children of the third wife of John Walter, Sr., claim that they should also be included in the distribution of the proceeds of a sale of this property.

The questions presented are, whether the complainant, as the only surviving one of the three children who were to be provided for by the said deed, shall receive the said real estate which was to go to George, or the proceeds thereof; or whether her full brother, William Walter, shall share therein; or whether he and the half-brothers and sisters by the third wife of the grantor shall

132 share therein; and also whether or not the eight children of Mrs. King shall be entitled to share therein, standing in the place of their mother; and still the further question, as to whether

or not the two children of John Walter, Jr., shall be entitled to share therein?

In other words, the questions are, do the words in said clause, "the surviving children of the said John Walter, Senior," include all the children surviving at the death of George, or only the two others named in said deed as beneficiaries; or do they mean all the children surviving at the death of John Walter, Senior? Or only the survivor of the three named as beneficiaries at the time of the death of said John Walter, Senior?

In August 1900 John Walter, Sr., made provision for each of his children by his third wife, as shown by the exhibits Nos. 5, 6, 7 and 8, filed with the testimony herein, by conveying real estate to each one of them, reserving to himself, however, for and during his natural life, all the rents, issues and profits, of such property.

At the time of his death, he owned no real estate, but did have some personal property which passed under his will, executed March 3rd, 1906.

These conveyances to his four children by his third wife, it is contended, throw some light on the intention of the grantor in executing the deed of trust of June 18, 1869. The only light that they would seem to throw upon that question is this, that he evidently regarded the children of his first wife as provided for at his death by said deed of trust, and by the several conveyances
133 made to the two older children, John and William. I do not think that materially helps the court in construing the particular clause mentioned.

In the construction of a deed, however, there are certain things to be considered which distinguish it, when made for the purpose of providing for children after the death of the grantor, from a will made for the same purpose; for a deed determines the rights of the grantees or beneficiaries at the time of its execution, while a will is ambulatory, and does not take effect until the death of the testator; and therefore it may be changed at any time, whenever a change is deemed necessary by reason of the birth or death of children, or of other members of a family.

Bearing this distinction in mind, the court must determine the true intent and meaning of this deed in trust by the aid of the circumstances surrounding the grantor at the date it was made; and must take into consideration the recitals in the said deed, as explanatory of the grantor's purpose; and the recital in the fore part of this deed, in part, is as follows:

"And whereas said party of the first part, from considerations of blood and natural affection, is desirous of making provision for his children by his first wife, to wit, Catherine Magdalena Sophia Walter, George N. Walter, and Mrs. Barbara King;

Now therefore this indenture witnesseth," etc.

Bearing this recital in mind, we must conclude that the purpose of the deed was to provide for only three of his children by his first wife.

The deed then recites at length the various pieces of property, real and personal, that are to be held by the trustee for the benefit of each

of his said three children, after the death of the grantor, but
134 reserving to the grantor the income and benefit of said property during his natural life; provides for $2,000, to be paid to his step-children; and recites certain provisions to equalize the gifts among his said children; and then follows the clause which is above quoted, with reference to what was to be done with the portion of either of said three children in case he or she died without leaving any child or children, or any issue of any child or children; and thereafter follow some directions as to how the said trustee shall execute his trust with reference to the care of the said property, and with reference to sales and reinvestments.

What did the testator mean by the word "surviving"? To whose death did he refer, when somebody was to survive? And what did he mean by the word "children"?

The word "surviving," would seem to relate to the time when one of the said three children should die without leaving issue; and if that is correct, the share that would be going to such deceased child would, from that moment, be vested in the trustee for some other beneficiary; and the beneficiaries in that event were to be the grantor's "surviving children." Could he have meant any surviving children other than the survivors of those three for whose benefit the deed in trust was made?

It will be remembered that neither of these three children was by said deed in trust entitled to anything during the lifetime of John Walter, Sr., but the title, subject to his life estate, and subject to the contingency of dying without issue, was vested in them by the said deed when it was delivered.

135 At that time the grantor was living with his second wife, by whom he had no children; and could not have contemplated her death and another marriage, and other children to be thereafter born. Neither would it be natural for him to contemplate the two older children, John and William, who had already received their portion of his estate by way of advancement, by deeds absolute; and he must therefore have had in mind only these three younger children by his first marriage when he said that the proceeds of the sale of the portion which would otherwise have gone to one of them or his issue, had he lived, should be paid over in equal portions to the surviving children of the said John Walter, Sr. He meant the same by these words as if he had used the one word "survivors."

In other words, it seems to me that what the grantor intended to do was to have such portion of his real estate sold, after his death, and the proceeds paid over in equal portions to the two surviving children, who were co-beneficiaries of the deceased child under the said deed; and if the scrivener had used the word "said" before the word "surviving," there would probably have been no occasion for construing this document.

It is useless to speculate as to why or how that word was omitted; but taking into consideration the circumstances of the grantor, and of his two older children at that time, the conclusion seems reasonably certain that he only intended that the two surviving children of these three should, in the contingency named, be vested with the title that

would otherwise have gone to the deceased child, or his issue.

136 By this construction, the equitable title to George's portion, subject to the life estate of John Walter, Sr., became vested in the complainant herein, and her sister Barbara King, at George's death, May 14, 1892. Being so vested, Barbara's share passed by her death to her eight children; and William Walter, the children of John Walter, Jr., and the four children of the third wife, have no share in the said property.

I will sign a decree in accordance with this view.

JOB BARNARD, *Justice.*

Decree Construing Deed in Trust.

Filed January 21, 1909.

In the Supreme Court of the District of Columbia.

No. 27459. In Equity.

CATHARINE M. S. FROSCH, Complainant,
vs.
WILLIAM WALTER et al., Defendants.

This cause standing ready for hearing and having been argued by counsel for the respective parties and submitted, the proceedings were read and considered by the Court; and the Court having ascertained and determined the distribution, proper to be made, according to the true intent and meaning of the deed of conveyance in trust from John Walter, Senior, to John Walter, Junior, in the said proceedings set forth, of the proceeds of the sale provided for by the

137 said deed of the parcel of ground and premises described in the third paragraph of the bill of complaint,

It is, therefore, this 21st day of January, A. D. 1909, adjudged, ordered and decreed by the Court as follows:

1. That the complainant Catharine M. S. Frosch and the defendants, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King and Mabel D. King, as the children and heirs at law of Barbara King, deceased, are entitled to the whole of said proceeds, in the proportion of one-half thereof to the said complainant and of one-half thereof, in equal shares, to the said defendants, the children and heirs aforesaid; and that the said proceeds shall be divided among them the said complainant and the said defendants accordingly.

2. That the defendant Henry W. Sohon, who by decree of this Court, heretofore passed, was substituted as trustee under the said deed be and he is hereby authorized, empowered and directed to make sale of the said parcel of ground and premises described in the third paragraph of the bill of complaint and containing 1974 square feet of ground; and that in the manner and course of his proceedings he shall in all respects observe, comply and conform to the provisions of Rule 91 of the Equity Rules of this Court as amended, giving

bond in the penalty of Forty thousand dollars; and that the advertisement of said sale shall be made in the Evening Star.

JOB BARNARD, *Justice.*

From the above decree, the complainant and all the defendants except the children of Barbara King and Henry W. Sohon, Trustee, in open Court, this 21st day of January 1909 note an appeal to the Court of Appeals of the District of Columbia, which appeal is allowed, and the penalty of the appeal bond to act as a supersedeas is hereby fixed at One Hundred Dollars.

JOB BARNARD, *Justice.*

Memorandum.

1909, February 11.—Appeal bond filed.

Mandate.

Filed February 5, 1910.

UNITED STATES OF AMERICA, *ss:*

[SEAL.]

The President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

Whereas, lately in the Supreme Court of the District of Columbia, before you, or some of you, in a cause between Catherine M. S. Frosch, complainant, and William Walter, Oscar Walter, Adolph Walter, Hugo Walter, Pauline Crow, Henry C. Walter, Frederick L. Walter, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, Mabel D. King, and Henry W. Sohon, Substituted Trustee, defendants, Equity No. 27459, wherein the decree of the said Supreme Court entered in said cause on the 21st day of January, A. D. 1909, is in the following words, viz:

This cause standing ready for hearing and having been argued by counsel for the respective parties and submitted, the proceedings were read and considered by the Court; and the Court having ascertained and determined the distribution, proper to be made, according to the true intent and meaning of the deed of conveyance in trust from John Walter, Senior, to John Walter, Junior, in the said proceedings set forth, of the proceeds of the sale provided for by the said deed of the parcel of ground and premises described in the third paragraph of the bill of complaint,

It is, therefore, this 21st day of January, A. D. 1909, adjudged, ordered and decreed by the Court as follows:

1. That the Complainant Catherine M. S. Frosch and the defendants, Ida S. Monday, Emma A. Schwab, William A. King, J.

Harry King, Margaret Collins, Caroline M. King, Eva A. King and Mabel D. King, as the children and heirs at law of Barbara King, deceased, are entitled to the whole of said proceeds, in the proportion of one-half thereof to the said complainant and of one-half thereof, in equal shares, to the said defendants, the children and heirs aforesaid; and that the said proceeds shall be divided among them the said complainant and the said defendants accordingly.

2. That the defendant Henry W. Sohon, who by decree of this Court, heretofore passed, was substituted as trustee under the said deed be and he is hereby authorized, empowered and directed to make sale of the said parcel of ground and premises described in the third paragraph of the bill of complaint and containing 1974 square feet of ground; and that in the manner and course of his proceedings he shall in all respects observe, comply and conform to the provisions of Rule 91 of the Equity Rules of this Court as amended, giving bond in the penalty of Forty thousand dollars; and that the advertisement of said sale shall be made in the Evening Star.

JOB BARNARD, *Justice.*

From the above decree, the complainant and all the defendants except the children of Barbara King and Henry W. Sohon, Trustee, in open Court, this 21st day of January, 1909, note an appeal to the Court of Appeals, of the District of Columbia, which appeal is allowed, and the penalty of the appeal bond to act as a supersedeas is hereby fixed at One Hundred Dollars.

JOB BARNARD, *Justice.*

as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, prayed by Catherine M. S. Frosch, William Walter, Oscar Walter, et al., whereon Ida S. Monday, Emma A. Schwab, William A. King, et al., were made the parties appellees, agreeably to the Act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of January, in the year of our Lord one thousand nine hundred and ten, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, reversed with costs; and that the said Catherine M. S. Frosch, William Walter, Oscar Walter, et al. recover against the said Ida S. Monday, et al. one hundred and one dollars and forty cents for their costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said Supreme Court with directions to modify its decree in accordance with the opinion of this Court, and that William Walter share equally with appellant Catherine Frosch

in the distribution of the proceeds of the sale of the portion of George N. Walter.

JANUARY 17, 1910.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this Court as according to right and justice and the laws of the United States ought to stand, the said appeal notwithstanding.

Witness the Honorable Seth Shepard, Chief Justice of said Court of Appeals, the 5th day of February, in the year of our Lord one thousand nine hundred and ten.

Costs of Catherine M. S. Frosch et al.

Clerk	$15.40
Attorney	5.00
Printing Record	81.00
	$101.40
Record	42.35
	$143.75

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Decree in Conformity with Mandate of Court of Appeals.

Filed February 15, 1910.

In the Supreme Court of the District of Columbia.

In Equity. No. 27459.

CATHERINE M. S. FROSCH
vs.
IDA S. MONDAY et al.

In conformity with the mandate of the Court of Appeals of the District of Columbia, filed herein, February 5, 1910, and the opinion of said Court, referred to in said mandate, it is this 15th day of February, 1910, ordered and decreed by this Court, that so much of the decree of this court, passed herein January 21, 1910, be vacated and set aside, as holds that the complainant Catherine M. S. Frosch and the defendants Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King and Mabel D. King, as the children and heirs at law of Barbara King, deceased, are entitled to the whole of the fund to be derived from the sale, therein directed to be made by the

defendant, Henry W. Sohon, trustee, of the real estate described in the third paragraph of the bill of complaint, in the proportion of one-half thereof to the said Catherine M. S. Frosch and one-half thereof to the said Ida S. Monday and other the children and heirs aforesaid.

And it is further ordered and decreed by this court, pursuant to the said mandate and opinion, that the complainant, Catherine M. S. Frosch and the defendant William Walter are entitled to the whole of the proceeds of such sale, in the proportion of one-half thereof, to the said Catherine M. S. Frosch and one-half thereof to the said William Walter: and that as thus modified, the said decree of January 21, 1910, stand as the decree of this Court.

JOB BARNARD.

From the above decree, appeals to the Court of Appeals of the District of Columbia are separately prayed in open court by the complainant, Catherine M. S. Frosch, and by the defendants Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, and Mabel D. King, children and heirs of Barbara King, deceased, and by the defendants Henry C. Walter and Frederick L. Walter, children of John Walter, Jr. deceased, and by the defendants Oscar Walter, Hugo Walter, Adolph Walter and Pauline Crow, and the said appeals are severally allowed, and the penalty of the bond on appeal, to act as a supersedeas is fixed as one hundred dollars.

JOB BARNARD, *Justice.*

Bond on Appeal.

Filed March 3, 1910.

In the Supreme Court of the District of Columbia.

No. 27459. In Equity.

CATHERINE M. S. FROSCH, Complainant,

vs.

IDA S. MONDAY et al., Defendants.

Know all men by these presents, That we Catherine M. S. Frosch, Complainant in the above entitled cause, and Ida S. Monday, Emma Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. (King) Edwards, and Mabel D. King, Defendants therein, and Henry C. Walter, and Frederick L. Walter, defendants therein, and Oscar Walter, Hugo Walter, Adolph Walter, and Pauline Crow, defendants therein, as principals, and The Bankers Surety Co. as surety, are held and firmly bound unto William Walter, a defendant therein in the full sum of one hundred (100.00) dollars to be paid to the said William Walter, his executors, administrators, successors, or assigns. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, administrators, successors and assigns, firmly by these presents.

Sealed with our seals and dated this 2d day of March, in the year of our Lord one thousand nine hundred and ten.

Whereas the above named Catherine M. S. Frosch and Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King and Eva A. (King) Edwards, and Mabel D. King, and Henry C. Walter, and Frederick L. Walter and Oscar Walter, Hugo Walter, Adolph Walter and Pauline Crow have prosecuted appeals to the Court of Appeals of the District of Columbia, to reverse the decree rendered in the above suit by the said Supreme Court of the District of Columbia on February 15, 1910.

Now therefore the condition of this obligation is such that if the above named appellants shall prosecute their said appeals to effect, and answer all damages and costs if they fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

J. HARRY KING, [SEAL.]
MARGARET A. COLLINS, [SEAL.]
CAROLINE M. KING, [SEAL.]
MABEL D. KING, [SEAL.]
IDA S. MONDAY, [SEAL.]
WILLIAM A. KING, [SEAL.]
EMMA A. SCHWAB, [SEAL.]
EVA A. EDWARDS, [SEAL.]
CATHERINE M. S. FROSCH, [SEAL.]
By BARNARD & JOHNSON, *Attorneys.* [SEAL.]
HENRY C. WALTER, [SEAL.]
FREDERICK L. WALTER, [SEAL.]
By JAMES B. ARCHER, JR., *Att'y.* [SEAL.]
OSCAR WALTER, [SEAL.]
HUGO WALTER, [SEAL.]
ADOLPH WALTER, [SEAL.]
PAULINE CROW, [SEAL.]
By M. J. COLBERT, *Att'y.* [SEAL.]
THE BANKERS SURETY CO.
[SEAL.] JOHN B. CLARK, *Attorney in Fact.*

Approved this 3d day of March 1910.

JOB BARNARD,
Justice S. C. D. C.

Designation of Record.

Filed March 15, 1910.

In the Supreme Court of the District of Columbia.

Eq. No. 27459.

C. M. S. FROSCH
vs.
WILLIAM WALTER et al.

The Clerk will please prepare transcript of record on appeal to the Court of Appeals in the above entitled cause and include therein the following:

1. Original Bill and exhibits thereto.
2. Answer of all the defendants.
3. Complainant's testimony and exhibits thereto.
4. Defendants' testimony.
5. Stipulation filed August 14, 1908.
6. Opinion of Court.
7. Final decree.
8. Bond on first appeal.
9. Mandate of Court of Appeals.
10. Final decree on mandate of Court of Appeals, and notation of appeal therefrom.
11. Bond on second appeal.

M. J. COLBERT,
On Behalf of All Appellants.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 82, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 27459 in Equity, wherein Catherine M. S. Frosch is Complainant and William Walter et als. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 17th day of March A. D. 1910.

[Seal of Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2137. Catherine M. S. Frosch, et al., Appellants, vs. William Walter. Court of Appeals, District of Columbia. Filed Mar. 18, 1910. Henry W. Hodges, Clerk.

TUESDAY, *May 3d, A. D.* 1910.

No. 2137.

CATHERINE M. S. FROSCH, IDA S. MONDAY, EMMA A. SCHWAB et al.,
Appellants,
vs.
WILLIAM WALTER.

On motion of Mr. M. J. Colbert, attorney for the appellants, It is ordered by the Court that the printing of the record in the above en-

titled cause be dispensed with. Whereupon this cause was submitted to the consideration of the Court on the transcript of record filed herein.

No. 2137.

CATHERINE M. S. FROSCH, IDA S. MONDAY, EMMA A. SCHWAB et al., Appellants,
vs.
WILLIAM WALTER.

Opinion per Curiam.

For the reasons stated in the opinion of this Court on a former appeal between the same appellants and Ida S. Monday, et al., No. 2002, decided at the January Term, 1910, the decree of the Court below from which the present appeal is taken is affirmed with costs.

No. 2002.

CATHERINE M. S. FROSCH, WILLIAM WALTER, OSCAR WALTER et al., Appellants,
vs.
IDA S. MONDAY, EMMA A. SCHWAB, WILLIAM A. KING et al.

Opinion.

Mr. Justice VAN ORSDEL delivered the opinion of the Court:

This is an appeal from the decision of the Supreme Court of the District of Columbia involving the construction of a deed of trust given by John Walter, Sr., on June 18, 1869, whereby certain real estate in the District of Columbia, and certain securities for moneys due him were conveyed to John Walter, Jr., in trust for the grantor for life and at his death to be conveyed in separate parcels to three of his children or their heirs.

The grantor, John Walter, Sr., was married four times. By his first wife, he had five children; namely, the appellants, Catherine M. S. Frosch and William Walter, and John Walter, Jr., George N. Walter and Barbara Walter King. His second wife was a widow, who, at the time of their said marriage, had three children by a former husband. There was no issue born of the second marriage. On the death of his second wife, he married again, and, by his third wife, he had four children—the appellants, Oscar Walter, Adolph Walter, Hugo Walter, and Pauline Crow. On the death of his third wife, he married again, and from his fourth wife he obtained subsequently a decree of absolute divorce. No children were born of this marriage. At the time the deed of trust in question was made, the grantor was living with his second wife, and had living at that time, the five children of his first marriage. The two children John Walter, Jr., and William Walter were each over 21 years of age at the date of the execution of this deed.

It appears that on June 18, 1869, John Walter, Sr., was possessed of a large amount of real estate in the City of Washington, District of Columbia, as well as certain securities. He seems to have had an interest in lots five and six, in square 323, this city, which had been before this time conveyed by one Joseph Nathan to William Walter, son of John Walter, Sr., and also in lot eight and part of lot nine, in square 377, which had been prior to this date conveyed by one John W. Nairn to the sons William Walter and John Walter, Jr., jointly. On the above date, John Walter, Sr., made a division of his estate, or at least of a portion of it, among his five children. He required his son William to convey to him his interest in lots five and six, square 323, for the nominal consideration of one dollar. He required his son John Walter, Jr., to convey his interest in lot eight and part of lot nine, square 377, to his son William Walter, this constituting the portion intended for William. He then conveyed to his son John Walter, Jr., "in consideration of natural love and affection and the sum of $10,000," lot ten, square 347, on F street, in this city, as his portion. These conveyances were in fee simple.

He then executed the deed of trust in question, the purpose of which is expressed therein as follows: "Whereas the said John Walter, Sr., of the first part is the owner of certain real estate in the city of Washington, and certain credits, some of which are secured by deed of trust on real estate in said city. And whereas said party of the first part from considerations of blood and natural affection is desirous of making provision for his children by his first wife to wit: Catherine Magdalena Sophia Walter, George N. Walter, and Mrs. Barbara King. Now, therefore," etc.

In this deed he conveys to the trustee certain described real estate and securities to be held by the trustee subject to the declaration of trusts therein made. The material features of the trust were that the trustee should pay over to the grantor "the rents, issues, and profits" of the entire trust estate "for and during the term of his natural life;" that out of the rents and profits of the estate he should pay three-fourths of the cost of certain improvements then being made on the property conveyed to his son, John Walter, Jr., and, in the event the improvements were not computed during the lifetime of the grantor, the residue of the cost thereof should be paid out of the property conveyed to his son William Walter. He also instructed the trustee to pay to his present wife out of the rents and profits of the trust estate $2,000, in case she survived him, for the benefit of his stepchildren, her children by a former husband, and, in the event she did not survive him, then the trustee, at the death of the grantor, should pay this sum to the stepchildren direct.

He then, by way of making definite provision for the three children, Catherine, George, and Barbara, and their respective children, directed that upon his, the grantor's, death the trustee should hold a certain described portion of the trust estate in trust to pay to his daughter Catherine for her life "the rents, issues, and profits" thereof, and, in the event of her death, to hold the same for her children in fee. The trustee was directed to hold upon like trusts and conditions another described portion of the trust estate for the benefit of

his daughter Barbara and her children, and the remaining portion of the trust estate in like manner for the benefit of his son George and his children.

Then follows the provision of the deed, the construction of which is here sought: "That in the event of the death of any one of the above mentioned children of the said John Walter, Sr., to wit: Catherine, George, and Barbara, without leaving any child or children or any issue of any child or children, then and in that case that the property held in trust by said trustee party of the second part for the benefit of the party then dying without issue shall be sold by said party of the second part, after the death of John Walter, Sr., and the proceeds paid over in equal portions to the surviving children of the said John Walter, Sr., party of the first part." All of the above conveyances were executed simultaneously on June 18, 1869, as a part of the general plan of John Walter, Sr., to make provision for his children.

It further appears that on the 18th day of August, 1900, John Walter, Sr., made a second division of the real estate of which was then possessed, and which was not included in the former division, among the four children by his third wife, conveying to each portions of said real estate for a nominal consideration in fee simple absolute, with a reservation therein of a life estate as follows: "That the said party of the first part does hereby expressly reserve unto himself, for and during the period of his natural life, a life interest in and to the land and premises herein described and all the rents, issues, and profits thereof to have and apply for his sole use and benefit." Thus, it appears that, as to the children of the third wife, provision was made by the father in this separate and independent division of a portion of his property.

George N. Walter died unmarried and without issue on May 14, 1892. Thereafter, Barbara, who had married Albert King, died August 23, 1904, leaving surviving her eight children, who were made defendants in this action. John Walter, Jr., died on November 17, 1906, leaving two children, Henry C. Walter and Frederick L. Walter, also defendants in this suit. On April 12, 1907, the grantor, John Walter, Sr., died, leaving surviving him William and Catherine, children by his first wife, and Pauline, Hugo, Oscar and Adolph, children by his third wife.

This suit involves the distribution of the proceeds of the portion conveyed by the deed of trust to George N. Walter, who died without issue May 14, 1892. The bill alleges that it was the intention of the grantor by the deed of trust to provide exclusively therein for Catherine, Barbara and George. The prayers of the bill are in the alternative: first, that if the court should find that the complainant Catherine M. S. Frosch, is entitled to all the proceeds of the sale of the portion of George N. Walter, then that the trustee be decreed to convey the property in fee simple to her after full payment of $2,000 charged on all the trust estate for the benefit of the stepchildren of John Walter, Sr., the children of the second wife by her former marriage; and second, if the court should find that the complainant and her brother William Walter are entitled to equal shares

in said property, then that the trustee be directed to sell the property and divide the proceeds after full payment of the $2,000 aforesaid. The children of Barbara answer, claiming that they should have one-half of the said property. William Walter answers, claiming one-half of the property. The children of John Walter, Jr., claim the share that they insist would belong to their father if living at the date of the death of the grantor. The children of the third wife of the grantor answer, claiming that they should be included as surviving children in the distribution of the proceeds of the sale of this property.

The questions presented are, first, whether the complainant, as the sole survivor of the three children provided for in the deed of trust, shall receive the portion which was to go to George N. Walter; second, whether her full brother, William Walter, shall share therein; third, whether the half brothers and sisters by the third wife of the grantor shall share therein; fourth, whether the eight children of Mrs. King shall be entitled to share therein, standing in the place of their mother, and, fifth, whether the two children of John Walter, Jr., shall be entitled to share therein, representing the interest of their father. In other words, does the said clause, "surviving children of the said John Walter, Sr.," include all the children surviving at the death of George N. Walter; or does it mean all the children surviving at the death of John Walter, Sr.; or does it mean only the children by the first wife so surviving; or does it mean the two children, Barbara and Catherine, the survivors of George N., included in the deed of trust; or does it mean only the complainant as the sole survivor of the three named as beneficiaries in the deed of trust at the time of the death of John Walter, Sr.

The court below decreed, "That the complainant, Catherine M. S. Frosch, and the defendants, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, and Mabel D. King, as the children and heirs at law of Barbara King, deceased, are entitled to the whole of said proceeds, in the proportion of one-half thereof to the said complainant and of one-half thereof, in equal shares, to the said defendants, the children and heirs aforesaid; and that the said proceeds shall be divided among them, the said complainant and the said defendants, accordingly." The decree then directed the trustee to sell the property in question and divide the proceeds thereof, one-half to Catherine and the remainder equally between the eight children of Barbara.

The case comes here on appeal from the decree by the complainant, Catherine Frosch, who claims the entire fund, and by all of the defendants below, except Henry W. Sohon, trustee, and the children of Barbara King.

The deed here in question is in the nature of an executory trust. In construing such an instrument, it is the duty of the court to ascertain the intent of the grantor and to give force and effect to such intent when not repugnant to any rule of law. This being a deed, "the construction must be upon the view and comparison of the whole instrument and with an endeavor to give every part of it meaning and effect." Jackson v. Myers, 3 Johns., 387, 395. The deed before

us calls for the application of the same rules of construction which are employed generally by courts of equity in construing written instruments. As said by the court in Walsh v. Hill, 38 Cal., 481: "In the construction of written instruments, we have never derived much aid from the technical rules of the books. The one rule of much value—one which is frequently shadowed forth, but seldom if ever expressly stated in the books—is to place ourselves as near as possible in the seats which were occupied by the parties at the time the instrument was executed; then, taking it by its four corners, read it."

This conveyance, taken in connection with the others made at the same time, making provision for the children of the grantor then living, were in the nature of a testamentary disposition of his property. The intention of the grantor, therefore, gleaned from the instrument itself and the conditions existing at the time of its execution, must control in the determination of its legal effect. While in a deed of this nature the legal effect of its execution is different from that of a will, the same rules of construction, however, must be applied to it as in the case of devises. As was said in Ware v. Richardson, 3 Md., 505, 553: "It has been urged that more strictness is required in construing deeds than wills, and that as this is a deed the technical rules of construction should apply with unbending force. To this proposition we do not assent. Cruise, 1 vol., 459, says that the same mode of construction is adopted in cases of deeds as in cases of devises, in questions like the present."

We think that the legal effect, however, of a deed, such as the one before us, is very different from that of a will. It deals with the present; is irrevocable and final. The title to property conveyed passes immediately from the grantor and his control over it is gone; while a will deals with the future, subject to revocation at any time, and the conveyance of the title does not become effective during the lifetime of the testator. In the one instance, the rights of the grantees or beneficiaries are determined at the time of the execution of the instrument; in the other case the rights are determined as they are found to exist at the death of the testator. The deed can not be changed to meet contingencies that could not reasonably have been contemplated or foreseen by the grantor at the time of its execution; while the will may be changed at any time to accommodate the wishes of the testator to the changing conditions of life. Many circumstances may have impelled him to change his will, such as the death of his wife and a subsequent marriage, the death of children or other relatives, and numerous other contingencies which, at the time of the original execution of the instrument, can not, in reason, be held to have been within the contemplation of the maker.

Looking carefully at the language of the deed, and keeping in mind the conditions existing on June 18, 1869, when, by the several conveyances of that date, the grantor was impelled to part with his property to make provision for his children, we will consider first the rights of the children of John Walter, Sr., by his third wife to partake in the division of the property in question.

The words "surviving children" must be construed with reference to the persons sustaining that relation at the date of the execution of the deed of trust. Certainly, the remotest contemplation he could be charged with having in mind would be the possible issue by his present wife. A reasonable construction of the deed will not support the assumption that he contemplated a future marriage with issue. No reason is apparent why he should have had in mind future contingencies beyond such as might possibly arise in connection with those for whom he was then making provision. It would be inconsistent with the whole tenor and object of the deed to hold that the grantor intended to include children of a marriage in the future, which could not at this time have been contemplated. If such had been his design, it is fair to assume that the deed would have contained some intimation of that intention. It is unnecessary for us to intimate what would be, in our judgment, the proper construction to place upon these words were they used in a will. Being a deed, the property conveyed immediately passed beyond the control of the grantor. It is more reasonable, therefore, to hold that he referred only to the children then living and for which he was making provision.

This fact is emphasized by the action of the grantor in 1900, when he divided among the children by this third wife other real estate, of which he was then possessed, simultaneously conveying to each his respective portion in fee simple for a nominal consideration, reserving to himself, however, as in the former division, a life estate therein. On this date, he was making a second division and disposition of his property for the benefit of his children. No mention is made at this time of the previous objects of his bounty. His provision for the children of his third wife seems to have been regarded by him as a separate transaction, entirely independent of the division he had made thirty-one years before. At this time, George N. Walter had been dead for more than eight years. It was known to the grantor and his children that the portion awarded to him was being held subject to division upon the death of the father under the terms of the deed of trust, yet no reference was made at this time either to the former division or the contingency that had arisen under it. With this state of facts, we have no difficulty in holding that the children of John Walter, Sr., by his third wife, are not entitled to partake in the distribution of the fund here in controversy.

We will next consider a more difficult branch of the case, namely, the rights of the children of Barbara King to take the portion claimed to belong to their mother as a survivor of George N. Walter. It is essential to this inquiry to determine when the conversion of the interest of George N. Walter took place. It is clear that the interest of the parties in remainder could not become vested until the happening of this event. By an express provision of the deed, the real estate apportioned to George N. Walter had to be sold and the proceeds divided between the surviving children of John Walter, Sr., at his death. Hence, the conversion could not take place until the death of the father. In other words, the event which should happen before there could be a conversion, was the death of

John Walter, Sr. It matters not that the interest of George N. Walter has not yet been sold. The equitable conversion of the real estate into personalty to create the interests in remainder took place on the death of the grantor, the time fixed in the deed of trust for this event.

The rule of equitable conversion is well settled. Pomeroy in his work on Equity Jurisprudence, vol. 3, sec. 1162, 3d ed., discussing the time from which conversion takes effect, says: "This, like all other questions of intention, must ultimately depend upon the provisions of the particular instrument. The instrument might in express terms contain an absolute direction to sell or to purchase at some specified future time; and if it created a trust to sell upon the happening of a specified event, which might or might not happen, then the conversion would — only take place from the time of the happening of that event, but would take place when the event happened exactly as though there had been an absolute direction to sell at that time." In the case of the estate of Walkerly, 108 Cal., 627, 652, the court said: "The rule of equitable conversion merely amounts to this, that where there is a mandate to sell at a future time, equity, upon the principle of regarding that done which ought to be done, will for certain purposes and in aid of justice construe the conversion as effected at the time when the sale ought to take place, whether the land be then really sold or not. But whenever the direction is for a future sale, up to the time fixed, the land is governed by the law of real estate." To the same effect are Ward v. Arch, 15 Sim. (Eng. Ch.), 389; Monerief v. Ross, 50 N. Y., 431; McClure's Appeal, 72 Penn. St., 414; Bank v. Rice, 143 Cal., 265.

Concluding, as we must, that the portion of George N. Walter could not be converted for the purpose of distribution until the death of his father, it became, under the terms of the trust, at the death of George, a mere contingent remainder which could not vest during the life of John Walter, Sr. The mere possibility of any portion of it ripening into a vested estate depended upon the contingency of each member of the class to which it should descend, the surviving children of John Walter, Sr., at the time of his death, being in existence at that time. There was an estate to which the class was entitled and which vested in the class at the death of George N. Walter, but the personnel of that class could not be ascertained until the death of the father. Where a contingent remainder arises under the provisions of an instrument, such as the one before us, to be apportioned among a designated class of persons on the happening of a certain event—in this instance the death of the grantor—it is well settled that the remainder vests in the class until the happening of the event and not in the independent members of the class. The reason is apparent; since the class consists of the membership constituting it when the event happens. The existence of the individual members can not be ascertained prior to that time.

That a remainder of this sort vests in the class pending the happening of the event when it shall finally be apportioned according to the terms of the trust, is well settled. In Satterfield v. Mayes, 11 Humphrey (Tenn.), 58, answering the query whether such a remainder vests during the life tenancy, the court said: "It vests in

the described class, as a class, and not individually in persons comprising such class, and the entire subject of the gift survives to and vests in the persons constituting such class at the period when payment or distribution of the fund is to be made." Referring to this definition, the same court said in Nichols v. Guthrie, 109 Tenn., 535: "The correctness of the answer thus given is essential to the class doctrine; for if the remainder, during the continuance of the particular estate, vested in the individual members of the class, the interests so vested would be transmissible, as in any other vested remainder, and thus would destroy or abrogate this doctrine altogether."

In Richey v. Johnson, 30 Ohio St., 288, the testator willed his farm to his executors in trust to be managed by them until his debts were paid and then for the benefit of his wife during her life. At the death of the wife, the land was to be sold and the proceeds divided among certain heirs. The court holding that conversion did not take place until the determination of the life estate on the death of the wife, said: "The thing to be distributed was money, not land. The conversion was necessarily to precede the distribution, and the gift is therefore to be regarded as a bequest of personalty, and not as a devise of land. It makes no difference that the fund to be distributed is the proceeds of that which was land at the date of the will, or at the testator's death. The bequest is nevertheless a legacy, and when vested in interest in the legatee, whatever may be the time for its payment, the law of succession in respect to it is to be found in the statute, not of descent, but of distribution. A court of equity will regard the subject-matter as having the new character which the testator has impressed upon it by an unconditional order for its conversion. The courts of England uniformly agree upon this doctrine, and the *sale* rule obtains in most of the States of this country, and has been frequently recognized in this State." To the same effect is the case of McClain v. Capper, 98 Iowa, 145, where it was held that under a devise providing that "when my youngest child arrives at full age, I desire that the real estate be equally divided among my children, their heirs, or survivors of them," the children took no vested interest until the youngest child became of age. It was also held that the clause in the will, like the one in the deed before us, contained no words of gift or grant, except the direction for a division. The contingency in that case was held to be annexed to the gift itself, and not to the time of the division.

We think that, by the terms of the trust, the conversion of the interest of the deceased son George N. Walter, took place at his father's death; that the interest of George vested in the children of John Walter, Sr., surviving at the time of his death as a class, the membership of which should consist of the children in existence at that time, and that the right of a legatee within that class to take under the trust depended upon his being alive at the time fixed for the division and payment. Thompson v. Ludington, 104 Mass., 193; McCartney v. Osburn, 118 Ill., 403; Reilly v. Bristow, 105 Md., 326; Boston Safe Deposit Co. v. Blanchard, 196 Mass., 35; Storrs v. Burgess, 101 Me., 26; Webber v. Jones, 94 Me., 429.

We are, therefore, clearly of the opinion that the individual inter-

ests did not vest upon the death of George N. Walter, but upon the death of John Walter, Sr., because of the express declaration in the deed of trust that the corpus of the portion of any one of his three children specially provided for in the trust estate, who should die without issue, should go to such of his children as were surviving at the time of the termination of the life estate. In other words, it was a bequest in the nature of a direction to divide the proceeds of certain property at a specified time and to distribute it among certain described persons to vest in those in esse answering the description at the appointed time. At the appointed time for the conversion and division of the share of the deceased son, George, the daughter Barbara was not in existence, and could not answer the description required to entitle her to become possessed of a portion or to partake in the distribution.

The word "children," when used in a deed or will, has in law a well-defined meaning. It refers to the immediate descendants in the first degree of the person named as ancestor, unless there is something in the language of the instrument itself indicating a contrary intent. In the case of Adams v. Law, 17 How., 417, appealed from the Circuit Court of the District of Columbia, the court, considering the phrase "departed this life in the lifetime of said Thomas Law, leaving issue of said marriage, one or more children then living," said: "Does this description include the grandchildren? We think it does not. The word 'issue' is a general term, which, if not qualified or explained, may be construed to include grandchildren as well as children. But the legal construction of the word 'children' accords with its popular signification, namely, as designating the immediate offspring. See Jarman on Wills, 51. It is true, in the construction of wills, where greater latitude is allowed, in order to effect the obvious intention of the testator, grandchildren have been allowed to take under a devise 'to my surviving children.' But even in a will, this word will not be construed to mean grandchildren, unless a strong case of intention or necessary implication requires it. Hence it is decided, that a power of appointment to children will not authorize an appointment to grandchildren. Robinson v. Hardcastle, 2 Bro. Ch., 344; 4 Kent's Com., 345. In Reeves v. Brymer, it was said, by Lord Alvanley, that 'children may mean grandchildren when there can be no other construction, but not otherwise.' 4 Ves., 697. * * * Hence, in the construction both of wills and deeds, where the instrument has not, so carefully as in the present case, limited the word 'issue' to children living, etc., but where the term is used without qualification, and is in another part of the same instrument supplied by the word child, or children, as a synonym, the courts have uniformly restrained its signification to children." In Chromer v. Pinckney, 3 Barb. Ch., 466, the following definition appears: "Thus the word children, in its primary and ordinary sense, means the immediate legitimate descendants of the person named. And where there is nothing to show that the testator intended to use it in a different sense, it will not be held to include illegitimate offspring, stepchildren, children by marriage only, grandchildren, or more remote descendants. Radcliff v. Buckley, 10 Ves., 195; Earl of Orford v. Churchill, 3 Ves. & Bea., 69; Izard v. Izard's Ex'rs, 2 Desaus Rep.,

309; Gardiner v. Heyer, 2 Paige's Rep., 11; Hussey v. Berkeley, 2 Edon's Rep., 149."

The rule, therefore, is well established that the word "children" can not be made to include grandchildren, unless there is something in the instrument showing such an intention. In the deed of trust before us, we find no such intention expressed. On the contrary, the grantor provides specifically that the issue of each of his children to whom property was apportioned in trust should inherit the portion of the parent. Besides, as to the division of the portion here in question, the grantor used the words "the surviving children of the said John Walter, Sr." Barbara King was one of the children provided for in the trust. Her portion as therein provided has descended to her children. Manifestly, after such a specific designation in the instrument itself, it can not be contended that they should be included in the term "surviving children," as used by the grantor in the connection here under consideration.

In this view of the case we hold that the children of Barbara King are not entitled to partake in the distribution of the proceeds of the portion of George N. Walter. For the same reason the children of John Walter, Jr., are also excluded.

We now come to the question of the right of William Walter to participate in this distribution. Here, again, as in determining the rights of the children of John Walter, Sr., by his third wife, we are relegated, without the benefit of precedent, except as to the rules of construction, to a reasonable interpretation of the instrument itself. Does the clause under consideration relate solely to the three children specifically provided for in the deed of trust? We think that the statement of the purpose the grantor had in mind in executing the deed that the "said party of the first part from considerations of blood and natural affection is desirous of making provision for his children by his first wife, to wit: Catherine Magdalena Sophia Walter, George N. Walter, and Mrs. Barbara King," does not necessarily govern the disposition he desired made of the portion of one of the beneficiaries of the trust created should such a one die without issue.

We must, as nearly as possible, put ourselves in the position of John Walter, Sr., on June 18, 1869, when, to provide for his children then living, the various transactions of that date looking to this common end were had. In the deed of trust, he does not exclusively treat of the portions assigned to the three children for whom the trust estate was created, but he also considers the portion conveyed in fee to John Walter, Jr., and William Walter. He provides in the deed of trust for the equalization of each of these interests to correspond with the interest of each of the others. Beginning with the habendum clause of the deed, it treats of the respective shares of each of the five children, as follows: "To have and to hold the same unto and to the use of the said John Walter, Jr., party of the second part, his heirs and assigns forever. In trust, nevertheless, for the uses and purposes following and none others, that is to say, first, that the said party of the second part shall pay over all the rents, issues, and profits of the above described pieces of property to the said John Walter, Sr., party of the first part, for and during the term of his natural life. And in case the said John Walter, Sr., shall die before the comple-

tion of the improvements now being made on the pieces of property situated in Washington City, on F street, between Tenth and Eleventh streets west, which property has been made over by deed of even date herewith to John Walter, Jr., by the said John Walter, Sr., his father, as a provision for the said John Walter, Jr., then on the further trust that the said party of the second part shall in a reasonable time after the decease of the said John Walter, Sr., raise from the rents, issues, and profits of the hereinbefore described pieces of property a sum of money equal to three-fourths (¾) of the amount that shall be necessary to complete the improvements on the said property on F street in a manner now contemplated to complete said improvements, which sum shall be applied to that purpose by said party of the second part, provisions having been otherwise made for raising the other one-fourth (¼) of the amount necessary to complete said improvements in that event from the rents and profits of the estate deeded to William Walter and John Walter, Jr., by J. W. Nairn by deed bearing date November 18, 1867, as a provision for said William Walter; and, secondly, that the said party of the second part shall pay out of the rents, issues, and profits of the above described pieces of property within one year after the demise of the said party of the first part the sum of $2,000 to his present wife, Catherine Walter, if she survives the said John Walter, Sr., party of the first part, for the use of her children by her first husband, and if she does not survive the said party, then the said $2,000 shall be paid to and be divided equally between her said children."

Then follows the creation of the trusts for each of the three children specially named in the deed. He then sets aside the $10,000 bond received from John Walter, Jr., as part consideration for the property deeded him in fee, as a part of the portion to be held in trust for the benefit of Catherine, his daughter.

Disposing of other securities the deed provides: "Witnesseth that the said John Walter, Sr., of the first part, in order more fully to equalize the division of his property, among his children, hereby assigns and transfers said notes for about $7,300, and the deed securing their payment to John Walter, Jr., in trust * * * to pay over the rents and profits and issues of the same to John Walter, Sr., for and during his natural life, and after his decease, to pay over the rents, issues, and profits of the same to Mrs. Barbara King aforesaid for and during her natural life and from and after her decease to hold the same for the use of all and every the children of the said Barbara King in fee and their heirs forever." Thus it will be observed that the father, John Walter, Sr., on June 18, 1869, was making a general testamentary division and disposition of his property among his five children.

The learned justice in the court below, in treating of this branch of the case in his opinion, after discussing the effect of the words "surviving children" as used in the deed, said: "Neither would it be natural for him to contemplate the two older children, John and William, who had received their portion of his estate by way of advancement by deeds absolute; and he must therefore have had in mind only these three younger children by his first marriage when he said that the proceeds of the sale of the portion which would otherwise

have gone to one of them or his issue had he lived, should be paid over in equal portions to the surviving children of the said John Walter, Sr. He meant the same by these words as if he had used the one word 'survivors.' In other words, it seems to me that what the grantor intended to do was to have such portion of his real estate sold, after his death, and the proceeds paid over in equal portions to the two surviving children, who were cobeneficiaries of the deceased child under the said deed; and if the scrivener had used the word 'said' before the word 'surviving,' there would probably have been no occasion for construing this document. It is useless to speculate as to how or why that word was omitted; but taking into consideration the circumstances of the grantor, and of his two older children at that time, the conclusion seems reasonably certain that he only intended that the two surviving children of these three should, in the contingency named, be vested with the title that would otherwise have gone to the deceased child, or his issue."

The insertion of the word "said" before the words "surviving children," we think, is wholly unwarranted. It injects into the instrument a meaning which, in its absence, the document will not admit of, either by a strict interpretation of its terms or by the circumstances attending its execution. We think the more reasonable rule to be applied is that John Walter, Sr., apportioned the property described in the various instruments of June 18, 1869, among his children, equalizing the portions as nearly as possible. That the equalization took place at that time is apparent; in fact, the language of the deed of trust shows it to have been the determining thought in the mind of the grantor. No reason exists, and none can be gathered from the terms of the instrument itself, why the grantor should defer the equalization of the shares of the respective children until one of the three provided for in the trust estate should die without issue. It is impossible to conceive that he would make the one act of common justice that prompted this division—the making of an equal division of his property—contingent upon the happening of a highly improbable event. The instrument itself will not support such a conclusion. The high sense of justice which seems to have moved the grantor in all of his transactions relative to making provision for those dependent upon him, refutes it. There is a total lack of any adequate reason that would actuate him to leave the rights of some of his children to share equally with the others to depend upon so remote a contingency as the death of a brother or sister without issue. The result, the very thing that has happened, shows the absolute injustice of any such an arrangement. If William Walter is to be denied the right to participate in this distribution, it means that Catherine Frosch will get twice as much of her father's estate as her brother. If the decree of the court below be sustained, it means that the children of Barbara King would get twice as much of the estate of their grandfather as the children of John Walter, Jr. Such reasoning is not in line with our interpretation, not only of the intention of the grantor, but of the express language of the deed itself.

We are, therefore, of the opinion that William Walter should share equally with the appellant, Catherine Frosch, in the distribution of

the proceeds of the sale of the portion of George N. Walter, and the court below is instructed to modify the decree entered in accordance with this opinion.

Reversed with costs, and it is so ordered.

Reversed.

Tuesday, May 3d, A. D. 1910.

No. 2137. April Term, 1910.

CATHERINE M. S. FROSCH, IDA S. MONDAY, EMMA A. SCHWAB et al., Appellants,
vs.
WILLIAM WALTER.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

PER CURIAM.

May 3, 1910.

In the Court of Appeals, District of Columbia, April Term, 1910.

No. 2137.

CATHERINE M. S. FROSCH et al.
vs.
WILLIAM WALTER.

Petition of Catherine M. S. Frosch, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King Edwards, Mabel D. King, Henry C. Walter, Frederick L. Walter, Oscar Walter, Hugo Walter, Adolph Walter, and Pauline Crow, respectfully represents to the court as follows:

1. They are the appellants in the above entitled cause, wherein this Honorable Court has affirmed the decree of the Supreme Court of the District of Columbia from which the present appeal was taken.

2. They aver that the value of the real estate involved in this cause, and which is the property in dispute, exceeds the sum of $5,000.00 in value, and is worth not less than $20,000.00, and appellants say that the decree of this Honorable Court is reviewable on appeal in the Supreme Court of the United States.

Wherefore, the premises considered, the petitioners pray that this Honorable Court may allow them an appeal to the Supreme Court of the United States, and further pray the court to fix the amount of the bond on appeal to act as a supersedeas.

OSCAR WALTER,
HUGO WALTER,
ADOLPH WALTER,
PAULINE CROW,
By M. J. COLBERT, *Their Att'y.*
HENRY C. WALTER,
FREDERICK L. WALTER,
By J. B. ARCHER, JR.
CATHARINE M. S. FROSCH.
By BARNARD & JOHNSON.
B. F. LEIGHTON.
IDA S. MONDAY,
EMMA A. SCHWAB,
WILLIAM A. KING,
J. HARRY KING,
MARGARET COLLINS,
CAROLINE M. KING,
EVA A. KING,
MABEL D. KING,
By H. T. TAGGART, *Att'y.*

I, Pauline F Crow, do solemnly swear that I have read the foregoing petition by me subscribed, and know the contents thereof; that the matters and things therein stated on personal knowledge are true, and those stated on information and belief I believe to be true.

PAULINE F. CROW.

Subscribed and sworn to before me this 3rd day of May, A. D. 1910.

[NOTARIAL SEAL.] EDMUND BRADY,
Notary Public, D. C.

(Endorsed:) Court of Appeals, D. C. No. 2137. Catharine M. S. Frosch, et al., vs. William Walter. Petition for allowance of appeal to U. S. Supreme Court. Court of Appeals, District of Columbia. Filed May 3, 1910. Henry W. Hodges, Clerk.

Tuesday, May 3d, A. D. 1910.

No. 2137.

CATHERINE M. S. FROSCH, IDA S. MONDAY, EMMA A. SCHWAB et al., Appellants,
vs.
WILLIAM WALTER.

On motion of Mr. M. J. Colbert, attorney for the appellants in the above entitled cause, It is ordered by the Court that said appellants be allowed an appeal to the Supreme Court of the United States, and the bond to act as supersedeas is fixed at the sum of three hundred dollars.

Know all men by these presents, That we Catherine M. S. Frosch, Oscar Walter, Adolph Walter, Hugo Walter, Pauline Crow, Henry C. Walter, Frederick L. Walter, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King and Mabel D. King, as principals, and American Bonding Company of Baltimore, a corporation, as surety, are held and firmly bound unto William Walter in the full and just sum of Three Hundred Dollars ($300.00), to be paid to the said William Walter, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 11th day of November, in the year of our Lord one thousand nine hundred and ten.

Whereas, lately at a Court of Appeals of the District of Columbia a final decree was rendered, to wit, No. 2137, on the docket of said Court of Appeals aforesaid, in a suit depending in said Court, between Catherine M. S. Frosch, Oscar Walter, Adolph Walter, Hugo Walter, Pauline Crow, Henry C. Walter, Frederick L. Walter, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, and Mabel D. King, Appellants, and William Walter, Appellee, a decree was rendered against the said Catherine M. S. Frosch, Oscar Walter, Adolph Walter, Hugo Walter, Pauline Crow, Henry C. Walter, Frederick L. Walter, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, and Mabel D. King, and the said Catherine M. S. Frosch, Oscar Walter, Adolph Walter, Hugo Walter, Pauline Crow, Henry C. Walter, Frederick L. Walter, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King and Mabel D. King who, having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said William Walter, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, That if the said Catherine M. S. Frosch, Oscar Walter, Adolph Walter, Hugo Walter, Pauline Crow, Henry C. Walter, Frederick L. Walter, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, and Mabel D. King shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

HENRY C. WALTER,
FREDERICK L. WALTER, [SEAL.]
By JAMES B ARCHER, *Att'y.*
OSCAR WALTER, [SEAL.]
By M. J. COLBERT, *Att'y.*
ADOLPH WALTER, [SEAL.]
By M. J. COLBERT, *Att'y.*
HUGO WALTER, [SEAL.]
By M. J. COLBERT, *Att'y.*
PAULINE CROW, [SEAL.]
By M. J. COLBERT, *Att'y.*
CATHERINE M. S. FROSCH, [SEAL.]
By RALPH P. BARNARD, *Att'y.*
EMMA A. SCHWAB, [SEAL.]
By HUGH T. TAGGART, *Attorney.*
IDA S. MONDAY, [SEAL.]
By HUGH T. TAGGART, *Attorney.*
WILLIAM A. KING, [SEAL.]
By HUGH T. TAGGART, *Attorney.*
J. HARRY KING, [SEAL.]
By HUGH T. TAGGART, *Attorney.*
MARGARET COLLINS, [SEAL.]
By HUGH T. TAGGART, *Attorney.*
CAROLINE M. KING, [SEAL.]
By HUGH T. TAGGART, *Attorney.*
EVA A. EDWARDS (late King), [SEAL.]
By HUGH T. TAGGART, *Attorney.*
MABEL D. KING, [SEAL.]
By HUGH T. TAGGART, *Attorney.*
AMERICAN BONDING COMPANY OF BALTIMORE, [SEAL.]
By THOS. J. DE LASHMUTT,
Attorney-in-Fact. [SEAL.]

[Seal of American Bonding Company of Baltimore.]

Sealed and delivered in presence of:—

——— ———.
——— ———.
——— ———.

Approved by:—
SETH SHEPARD,
Chief Justice Court of Appeals of the District of Columbia.

(Endorsed:) No. 2002. Catherine M. S. Frosch vs. William Walter et al. Bond on Appeal to Supreme Court of the U. S. Court of Appeals, District of Columbia. Filed Dec. 13, 1910. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, *ss:*

To William Walter, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Catherine M. S. Frosch, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, and Mabel D. King, children and heirs of Barbara King, deceased, Henry C. Walter, and Frederick L. Walter, children of John Walter Jr. deceased, Oscar Walter, Hugo Walter, Adolph Walter and Pauline Crow, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 13th day of December, in the year of our Lord one thousand nine hundred and ten.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted this — day of December A. D. 1910.

ANDREW A. LIPSCOMB,
Att'y of Wm. Walter.

[Endorsed:] Court of Appeals, District of Columbia. Filed Dec. 14, 1910. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 100 inclusive contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Catherine M. S. Frosch, Ida S. Monday, Emma A. Schwab, et al., appellants, vs. William Walter No. 2137, October Term, 1910, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix

the seal of said Court of Appeals, at the City of Washington, this 15th day of December A. D. 1910.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 22,457. District of Columbia Court of Appeals. Term No. 836. Catherine M. S. Frosch, Ida S. Monday, Emma A. Schwab et al., appellants, vs. William Walter. Filed December 29th, 1910. File No. 22,457.

Supreme Court of the United States.

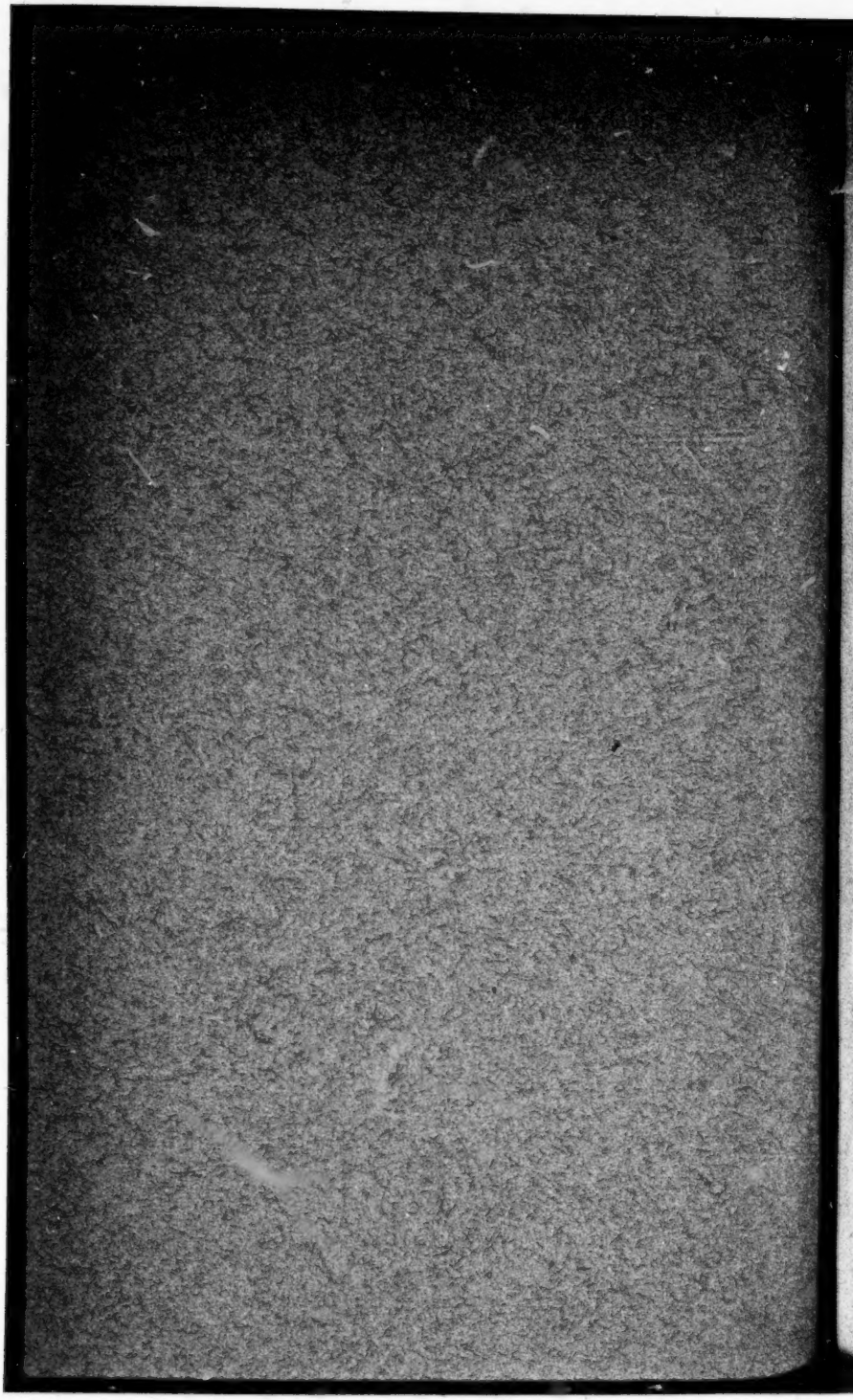
October Term, 1912.

No. 192.

CATHERINE M. S. FROSCH ET AL.,
APPELLANTS,
vs.
WILLIAM WALTER, APPELLEE.

Brief of Catherine M. S. Frosch, One of Appellants.

BENJAMIN F. LEIGHTON,
RALPH P. BARNARD,
GUY H. JOHNSON,
Attorneys for Catherine M. S. Frosch.



INDEX.

Page.

Assignment of Error 7

Intention of the grantor controlling rule of interpretation 7-15

Phrase "surviving children" does not mean grandchildren 25-33

Questions raised by the record 7

Statement of the case 1-7

"Surviving children"—meaning of, as used by grantor 33-36

Table of Cases.

	Page.
Ayre *vs.* Ayre, 16 Pick., 327	10
Adams *vs.* Law, 17 How., 417-421	30
A. & E. Enc. of Law, 2d. Ed., Vol. 5, p. 1085, and cases cited	30
Bank *vs.* Rice, 143 Cal., 265	19
Brograve *vs.* Winder, 2 Vesey, Jr., 634	20
Burnside's admnr. *vs.* Wall, 9 B. Mon., 318	20
Benner *vs.* Mauer, 133 Wis., 325	23
Bates *vs.* Gillett, 132 Ill., 287	25
Boston Safe Dep. Co. *vs.* Blanchard, 196 Mass., 35	28
City of Alton *vs.* Illinois Trans. Co., 12 Ill., 38	8
Croxall *vs.* Sherrerd, 5 Wall., 268	12
Cherbonnier *vs.* Goodwin, 79 Md., 55	29
Cromer *vs.* Pinckney, 3 Barb. Ch., 466	32
Devlin on Deeds, Vol. 2, Sec. 837	8
Dougherty *vs.* Thompson, 167 N. Y., 472	27
Fletcher *vs.* Ashburner, 1 Bro. C. C., 497	17
Green *vs.* Green, 23 Wall., 490	9
Hogarty (In re), 70 N. Y. Supp., 428, 62 App. Div., 79	27
Hale *vs.* Hobson, 167 Mass., 397	28
Jackson *vs.* Myers, 3rd Johnson, 395	8
Jones *vs.* Colbeck, 8 Vesey, Jr., 38 (Rolls 1802)	20
Jarman on Wills (2nd), p. 797	24
Keller et al. *vs.* Harper et al., 64 Md., 74	17
Lyon *vs.* Pollock, 99 U. S., 668	8
Leading Cases in Equity (1), part 2, top page 1120	17
Lewisohn *vs.* Henry, 179 N. Y., 352	27
McElroy *vs.* McElroy, 10 G. & J., 444	10
McClure's Appeal, 72 Pa. St., 414	19
McClain *vs.* Capper, 98 Iowa, 145	22
McCartney *vs.* Osburn, 118 Ill., 403, 412, 423	23, 29
Matthews *vs.* Ward, 10 G. & J., 444	8

Moore *vs.* Magrath, 1 Cowper (Eng.), 9 11
Moncrief *vs.* Ross, 40 N. Y., 431 18
Matter of Baer, 147 N. Y., 348 26
Marsh *vs.* Hague, 1 Edw. Ch. (N. Y.), 174, 186 32
Nichols *vs.* Guthrie, 109 Tenn., 536 21
Parker *vs.* Murch, 64 Me., 54 11
Pike *vs.* Monroe, 36 Me., 300 12
Pomeroy Eq. Juris., Sec. 1162, Vol. 3, 3rd Ed 18
Richey *vs.* Johnson, 30 Ohio St., 288 22
Reilly *vs.* Bristow, 105 Md., 326 29
Storrs *vs.* Burgess, 101 Me., 26 26
Treas. of State *vs.* Lang, 2 Baily (S. C.), 430 11
Twaites *vs.* Waller, 133 Iowa, 84 22
Tayloe *vs.* Mosher et al., 29 Md., 444 31
Taylor *vs.* Watson et al., 35 Md., 519 31
Thomson *vs.* Ludington, 104 Mass., 193 31
Ware *vs.* Richardson, 3 Md., 541 9
Williams *vs.* Claiborne, 7 Smeads & Marshall(Miss.), 488 11
Woods *vs.* Nashua Manu. Co., 5 N. H., 467 11
Walsh *vs.* Hill, 38 Cal., 481 12
Ward *vs.* Arch, 15 Sim. (Eng. Ch.), 389 18
Williams on Executors (7th Amer. Ed.), bottom page 1096 19
Webber *vs.* Jones, 94 Me., 429 25

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 192.

CATHERINE M. S. FROSCH ET AL.,
APPELLANTS,

vs.

WILLIAM WALTER, APPELLEE.

Brief of Catherine M. S. Frosch, One of Appellants.

Statement of the Case.

This case came here on appeal from a decree of the Court of Appeals of the District of Columbia, reversing a decree of the Supreme Court of the District of Columbia, involving the construction of a deed in trust. The deed was made by John Walter, Sr., on June 18, 1869. By it he conveyed certain real estate, situate in the District of Columbia, and certain securities for money due to him, unto his son, John Walter, Jr., in trust, to pay the income derived from said property to the grantor, for life, and upon his death to be held upon certain trusts therein declared and set out. John Walter, Sr., was married four times. By his first wife he had five children; namely, Catherine M. S. Frosch, William Walter, John Walter, Jr., George N. Walter, and Barbara Walter King. His second wife was a widow with three children by a former husband; there were no children of this marriage. On the death of his second wife,

he again married. By his third wife he had four children, named Oscar Walter, Adolph Walter, Hugo Walter, and Pauline Crow. Upon the death of his third wife, he married again. A divorce a vinculo was subsequently obtained from his last wife. He had no children by her.

At the time of the execution of the deed in question, the grantor was living with his second wife. All of the five children of the first marriage were then living; William and John Walter, Jr., were of lawful age at the time of the execution of the deed; Barbara was then married, and George N. and Catherine M. S. Walter were minors (Rec., p. 63). At the date of the deed in question, John Walter, Sr., owned a large amount of real estate in this city, as well as certain securities. In 1867 he had caused Joseph Nathan to convey lots 5 and 6 in square 323 to his son William, and had also caused one John W. Nairn to convey to his sons, William and John Walter, Jr., jointly, lot 8 and part of lot 9 in square 377, which he owned, or in which he had an interest. On June 18, 1869, the date of said deed, John Walter, Sr., made a division of his property among his five children by his first wife. He had at this time been married a little over six years to his second wife (Rec., p. 63). He required his son William to convey to him lots 5 and 6 in square 323 for a nominal consideration. He directed or required his son, John Walter, Jr., to convey lot 8 and part of lot 9 in square 377 to his son, William Walter, this being the part of his estate intended for him. He then conveyed to his son, John Walter, Jr., "in consideration of mutual love and affection, and the sum of $10,000," lot 10 in square 343, this city, as his portion. These conveyances were in fee simple.

The grantor in the trust before the court declares his purpose in executing the same in the following language:

> "Whereas the said John Walter, Sr., of the first part, is the owner of certain real estate in

> the city of Washington, and certain credits, some of which are secured by deeds of trust on real estate in said city; and whereas said party of the first part, for and in consideration of blood and natural affection, is desirous of making provision *for his children by his first wife*, to wit, Catherine Magdalena Sophia Walter, George N. Walter and Mrs. Barbara King; Now therefore, This Indenture Witnesseth," etc.

The deed conveys certain real estate and securities to the trustee upon the trusts following, to wit:

1. In trust, to pay to the grantor the rents, issues and profits of the entire property for his life; and further, to pay out of such rents and profits three-fourths of the cost of certain improvements then being made upon the property conveyed to his son, John Walter, Jr., with the proviso that if the improvements were not completed during the lifetime of the grantor, the other quarter of such cost was to be paid out of the rents and profits of the property conveyed in 1867 to William and John Walter, Jr., by I. W. Nairn.

2. To pay one year after the death of the grantor unto his wife Catherine, if she be then living, the sum of $2,000 for the use of her children by her first husband; if not then living, then said sum was to be paid to her said children.

3. Upon the further trust that from and after the death of the said John Walter, Sr., the remainder of said property was to be divided into three parts; one of said parts was to be held in trust for Catherine Magdalena Sophia Walter, she to have the rents, issues, and profits thereof during her life; the other two parts were limited upon like trusts and conditions to George N. Walter and Barbara King.

"In order more fully to equalize the division of his property among his children," John Walter, Sr., assigned

and set over unto said trustee, to be held by him in trust for the benefit of the said Catherine Magdalena Sophia and her children, the $10,000 bond of the said John Walter, Jr. (Rec., p. 10). This bond was given by John Walter, Jr., to his father as part of the purchase money of certain property that day deeded to him (Rec., p. 9).

The clause of said deed in trust, upon which the controversy hinges, is in the following language, to wit:

> "And it is hereby further witnessed that in the event of the death of any one of the above-mentioned children of the said John Walter, Sr., to wit, Catherine, George, and Barbara, without leaving any child or children or any issue of any child or children, then, and in that case, that the property held in trust by said trustee, party of the second part, for the benefit of the party then dying without issue, shall be sold by said party of the second part, after the death of John Walter, Sr., and the proceeds paid over in equal portions to the surviving children of the said John Walter, Sr., party of the first part" (Rec., p. 11).

All of these conveyances bear date June 18, 1869, and were executed at the same time, and were in execution of the general scheme of John Walter, Sr., to divide his property among his then children, and make provision for them. They must, therefore, be construed together as one expression of his general purpose. On the 18th day of August, 1900, John Walter, Sr., made a second division of the real estate then owned by him among his children by his third wife. He deeded to each of said children, in fee simple, valuable real estate situate in this city, reserving thereout a life estate unto himself. The reservation of such life estate is in the language following, to wit:

> "That the said party of the first part does hereby expressly reserve unto himself, for and during the period of his natural life, a life interest

in and to the premises herein described, and all the rents, issues, and profits thereof to have and apply for his sole use and benefit" (Rec., pp. 50, 53, 54, and 56).

None of the children of his first wife participated in this second division of the grantor's property; it was a distinct and independent provision for his children by his third wife.

George N. Walter died unmarried, intestate, and without issue on May 14, 1892; Barbara, who had married Albert King, died August 23, 1904; leaving her surviving eight children, all of whom were defendants to plaintiff's bill. John Walter, Jr., died on November 17, 1906, leaving two children, Henry C. and Frederick L. Walter, also defendants to said action. On April 12, 1907, the grantor, John Walter, Sr., died, leaving him surviving William Walter and Catherine M. S. Frosch, both children of his first wife, and Pauline, Hugo, Oscar, and Adolph, children of his third wife. This suit was brought to determine the title to the part of the property conveyed by the deed in trust to George N. Walter for life, and upon his death in fee to his children. As above stated, he died without issue in May, 1892. The bill alleges that it was the intention of the grantor to provide by the deed in trust exclusively for Catherine, Barbara, and George. The prayers to the bill are in the alternative: First, that should the court find that the plaintiff, Catherine M. S. Frosch, be entitled to all of the proceeds which may be derived from the sale of the part of the property in which George N. Walter, deceased, had a life estate, that then the trustee be directed to convey the property in fee to her after the payment of $2,000 charged on all of the property held in trust for the benefit of the children of the second wife of John Walter, Sr., by a former husband; and, second, should the court find that the plain-

tiff and her brother, William Walter, are entitled to equal shares in said property, then that the trustee be directed to sell the same and divide the proceeds after full payment of the $2,000 aforesaid between the said plaintiff and her said brother equally.

The children of Barbara King filed an answer, claiming one-half of the property; William Walter, in his answer, makes a similar claim. The children of John Walter, Jr., answer, claiming such portion of the property as would have gone to their father, if living, at the time of the death of the grantor. The children of grantor's third wife answer, claiming that they should be included in the distribution of the proceeds of sale of the property as surviving children of the grantor.

Justice Barnard, who decided the case in the Supreme Court of the District of Columbia, decreed that the complainant, Catherine M. S. Frosch, and the children of Barbara King, deceased, are entitled to the whole of said proceeds in proportion of one-half thereof to said complainant and one-half thereof in equal shares to the said defendants, the children and heirs aforesaid; and that the said proceeds shall be divided among them, the said complainant and the said defendants, accordingly (Rec., pp. 73, 74).

From this decree an appeal was taken by all of the parties to said suit, except the trustee in said deed in trust and the children of said Barbara King, to the Court of Appeals of the District of Columbia. That court reversed this decree, and remanded the case with instructions to enter a decree for the complainant for one-half of the proceeds of the property, and to the defendant, William Walter, for the other half. This was accordingly done. An appeal was taken from this last decree by all of the parties to said case, except the defendant, William Walter, to the Court of Appeals of the District of Columbia, where it was affirmed. From this decree

an appeal was taken to this court by all of the parties except the defendant, William Walter.

Assignment of Errors.

1. The court below erred in decreeing that the defendant, William Walter, is entitled to share equally with the appellant, Catherine M. S. Frosch, in the distribution of the proceeds to be derived from the sale of the property in controversy.

2. The court erred in not holding that Catherine M. S. Frosch is entitled to the equitable interest in said property, charged with the payment of the sum of $2,000 to the children of the grantor's second wife by her first husband.

ARGUMENT.

The questions raised by the record are:

1. Are the children of the grantor's third wife entitled to participate in the proceeds of sale of said property as "surviving children" of the said John Walter, Sr.?

2. Are the children of John Walter, Jr., and of Barbara King, both of whom died before John Walter, Sr., entitled to participate in the proceeds of said sale?

3. Does "surviving children" mean all of the surviving children of grantor's first wife, or only such of his children, named in the trust, as should be living at the time of the death of John Walter, Sr.?

Of these in their order:

First.

In interpreting deeds like the one in controversy the intention of the grantor, as shown by the deed itself and the surrounding circumstances, is the paramount rule of construction, as will appear by a review of the authorities.

In interpreting deeds that construction will be adopted that will give the instrument the legal effect intended to be accomplished by it.

City of Alton *vs.* Illinois Transportation Co., 12 Ill., 38.

An instrument intended as a deed, but invalid as such, has been held good as a contract of conveyance.

Lyon *vs.* Pollock, 99 U. S., 668.

A deed which contains words operative for that purpose, will be treated as a feoffment, or a deed of bargain and sale, as will best advance the intention of the parties.

Matthews *vs.* Ward, 10 G. & J., 444.

The rule is thus stated by Chief Justice Kent, in the case of Jackson *vs.* Myers, 3rd Johnson, 395:

> "The intent, when apparent, and not repugnant to any rule of law, will control technical terms, for *the intent, and not the words, is the essence of every agreement.* In the exposition of deeds the construction must be upon the view and comparisen of the whole instrument, and with an endeavor to give every part of it meaning and effect."

This rule of construction, as stated by Chancellor Kent, is adopted by Devlin in his learned work on deeds (vol. 2, sec. 837). In this same section the author states that the intention of the grantor in a deed, when it can be gathered by the instrument itself, unless in contravention of some law, controls its construction. The rule of construction appears with greater force where the instrument under consideration is a trust, as here. In such instruments the technical rules of construction which grew out of the principles and policy of the feudal system, and which rules continued to affect the decisions of the court, after that system had passed away, have no place in the construction of a trust.

In the case of Green *vs.* Green, Justice Hunt said:

> "Trusts are the mere creatures of confidence between party and party, totally distinct in almost every quality from those *legal* estates which are the subjects of tenure. They are in their nature independent of tenure, and therefore not the object of those laws which are founded in the nature of tenure. *They are rights arising solely out of the intent of the party who created them, and therefore such intent could be the only guide in the execution of them.*"
>
> 23 Wallace, 490.

It is true that the trust in this case was created by a will; but the rule of interpretation is the same, whatever the character of the instrument creating the trust.

The case of Ware *vs.* Richardson well illustrates the point under discussion:

One Kennedy, conveyed to a trustee, in consideration of love and affection towards Elizabeth Richardson, at a nominal money consideration moving from the trustee, certain real estate, in fee. The habendum clause in the deed limited the estate in said land, to the said trustee, "his heirs and assigns, in trust, nevertheless, for" "grantor, for life," and "immediately after her decease," then "upon this further trust, that said Elizabeth Richardson, shall and may, during her life," use and occupy said premises for her own benefit, notwithstanding her coverture, and without let or control of her present, or any future husband, or any liability for his debts, as fully as if she were unmarried. "And immediately after the death of the said Elizabeth, then to and for the use and benefit of her legal heirs and representatives."

The principal question in the case, was as to whether the statute of uses executed the use, and vested the legal title, in fee, to the remainder of the property, in

Elizabeth Richardson, under the rule in Shelley's case, or whether she had an equitable life estate only, and her heirs took upon her death, as purchasers.

Judge Mason, in deciding the case, said:

> "It has been urged that more strictness is required in construing deeds than wills, and that as this is a deed, the technical rules of construction should apply, with unbending force. To this proposition we do not assent. Cruise 1 Vol., 459, says, that the same mode of construction is adopted in cases of deeds as in cases of devises, in questions like the present."
>
> 3 Md., 541.

In the case of McElroy *vs.* McElroy, 113 Mass., 509, the grantor conveyed certain real estate in fee, to B, one of his brothers, with warranty of title and convenant, for a nominal consideration, in trust for C, another brother, in consideration of the love and affection he bore to C. The deed recited that the grantor intended to convey to B in trust for C, to have and to hold to said grantee his heirs and assigns, to his and their use forever. The question in the case was as to whether, on the death of C, a trust resulted to the grantor, and the court held that it did. Judge Ames, in deciding the case, said:

> "Whether there was such a resulting trust, *depends upon the intention of the grantor*, and for the purpose of determining that question, it is necessary to look carefully at the language of the deed, with the aid of such light as can lawfully be derived from the circumstances of the case."

The case of Ayre *vs.* Ayre, cited and relied upon in Ware *vs.* Richardson and Green *vs.* Green, presented the same question. After reviewing the authorities Judge Wilde said:

> "The question in all these cases and others has been what was the intention of the donor or per-

son creating the trust, and if the intention to create a separate estate or interest in the wife is distinctly expressed, or manifestly appears by circumstances connected with the words of gift, it is immaterial in what language the intention is manifested."

16 Pick., 327.

The court said further that the use of the word trust is not decisive on this point, *but the intention of the donor is to be ascertained by the object of the gift and the situation of* parties at the time when the deed was executed.

The recitals in a deed are important as showing the motives and reasons upon which the deed is founded.

Williams *vs.* Claiborne, 7 Smeads and Marshall (Miss.), 488.

The whole of an instrument declaring a trust must be considered in determining the nature and terms of the trust.

Parker *vs.* Murch, 64 Me., 54.

The rule that general and unlimited terms in a deed are restrained and limited by particular recitals is only a means of ascertaining the intention of the parties.

Treasurers of State *vs.* Lang, 2 Baily (S. C.), 430.

The effect of words of general grant in a deed, may be limited and controlled by a recital stating the purpose of the grant.

Woods *vs.* Nashua Manu. Co., 5 N. H., 467.

To the same effect is—

Moore *vs.* Magrath, I Cowper (Eng.), 9.

The intention of the parties is to be ascertained by considering all the provisions of the deed, as well as the situation of the parties.

Pike *vs.* Monroe, 36 Me., 309.

Mr. Justice Sanderson, in Walsh *vs.* Hill, 38 Cala., 481, says of this rule, as colored by his own experience:

> "In the construction of written instruments, we have never derived much aid from the technical rules of the books. The only rule of much value—one which is frequently shadowed forth, but seldom, if ever, expressly stated in the books—is to place ourselves as near as possible in the seats which were occupied by the parties at the time the instrument was executed; then, taking it by its four corners, read it."

In this case, the limitation of the estate to the trustee is of a use upon a use. The habendum clause of the deed is in the following language:

> "To have and to hold the same unto and to the use of the said John Walter, Jr. (trustee), party of the second part, his heirs and assigns forever, in trust for the uses and purposes following:"

The Statute of Uses had no application to an estate so limited, but it remained as a trust to be enforced in equity.

Croxall *vs.* Shererd, 5 Wall., 268.

The equitable interest created by the deed under consideration, notwithstanding the statute, remains equitable, and is cognizable only in a court of equity. The nature of the duties imposed upon the trustee, require him to retain the title to the property, independently of the form of limitation contained in the deed. He is to pay over to George N. Walter, the rents, issues and profits of the property conveyed in trust,

during the term of his natural life, and from and after his decease, to hold the same for his children, in fee, and their heirs, forever. He has the power to collect the rents himself, or to appoint an agent to make the collection in his behalf; to keep the property in repair; to sell the property, and on the receipt of the consideration money, to execute conveyances for the same, and to reinvest said proceeds, either in real estate, or personal securities, at the request of the parties entitled to the benefit of said trust, subject, nevertheless, to the approval of the trustee; and from time to time, to sell and invest said fund, as may appear for the best interest of the parties. In the event of the death of the said George N. Walter, without leaving any children or child, or any issue of any child or children, then, in that case, the trust property shall be sold by the trustee, after the death of John Walter, Sr., and paid over as therein directed (Rec., pp. 11 and 12).

Both upon principle and authority, the rule of construction which must govern the deed in controversy, is that the intention of the grantor, as disclosed by the deed and its recitals, and the circumstances attending its execution must be made the rule in determining its legal effect. The conveyance, with the others made by the grantor, about the same time, to his children, were in the nature of a testamentary disposition of his property.

The conveyance was inter vivos, and was to take effect immediately, and not upon the grantor's death. He divested himself of the entire title to said property, reserving thereout, for himself, a life estate. With the execution and delivery of the deed, his control over the title to the property was gone forever. The grantor was dealing with the property as it then was, and with the members of his family in the condition in which they then were. The deed must be read with the vision

of the grantor at that time, and interpreted by the light of the circumstances surrounding the family of the grantor. He had then been living with his second wife six years. She was, at the time of her marriage to him, a widow, with three children. His hope of issue by her was extinguished. The third wife was not at all in his thoughts, much less a third wife and a numerous issue.

The court below, in deciding this case, said on this point:

> "The words 'surviving children,' must be construed with reference to the persons sustaining that relation at the date of the execution of the deed of trust. Certainly the remotest contemplation he could be charged with having in mind would be the possible issue by his present wife. A reasonable construction of the deed will not support the assumption that he contemplated a future marriage with issue. No reason is apparent why he should have had in mind future contingencies beyond such as might possibly arise in connection with those for whom he was then making provision. It would be inconsistent with the whole tenor and object of the deed to hold that the grantor intended to include children of a marriage in the future, which could not at this time have been contemplated. If such had been his design, it is fair to assume that the deed would have contained some intimation of that intention."
>
> 34 Appls. D. C., 346.

That this is the interpretation put upon the deed in trust by the grantor himself, is shown by the provision he made for the children of his third wife, by the conveyances of property made to them on August 18, 1900. On that date he conveyed, by four separate deeds, to each of his children by his third wife, valuable real estate. The conveyances were in fee-simple, with a life estate reserved to the grantor, as in the first division of his

property. In this division, no mention is made of his children by his first wife, or of the provision made for them (Rec., pp. 50, 53, 54, and 56).

The present estimated value of these properties, is as follows, to wit: that deeded to Carl Oscar Walter is valued at $39,130; that deeded to Adolph Walter, at $25,000; that deeded to Lawrence Hugo Walter, at $54,064, and that deeded to Fredericka Pauline Crow at $22,500 (Rec., pp. 33 and 34). At the time of these conveyances, his son George N. Walter had been dead for eight years. He knew that he had died without issue; that the property intended as a provision for him and his children, would be sold in the near future. His silence in respect thereto, can only be construed as showing by his own interpretation of his own act, the provision for his children by his first wife, was separate and independent of, and unaffected by the provision he was then making for his other children. With these facts before the court below, it said:

> " . . . we have no difficulty in holding that the children of John Walter, Sr., by his third wife are not entitled to partake in the distribution of the fund here in controversy."
>
> 34 Appls. D. C., 347.

Second.

"Are the children of John Walter, Jr., and of Barbara King, both of whom died before John Walter, Sr., entitled to participate in the proceeds of the sale of the property in controversy?" The answer to this question depends upon the time of the vesting of the title to the executory or contingent interest, in remainder, in said property. When did said title vest? On the death of George N. Walter, or not until the death of his father, John Walter, Sr.? The language of the provision of

the trust in respect to a sale, is as follows: "that in the event of the death of any one of the above mentioned children of the said John Walter, Sr., to wit, Catherine, George, and Barbara, without leaving any child or children, *then, and in that case,* that the property held in trust by said trustee, party of the second part, for the benefit of the party thus dying without issue, shall be sold by the said party of the second part, *after the death of John Walter, Sr., and the proceeds paid over in equal parts, to the surviving children of the said John Walter, Sr., party of the first part.*" The duty of the trustee to sell, becomes fixed and absolute, on the death of George N. Walter, without children or the issue of children. The sale must be immediate, if, when that event occurs, John Walter, Sr., is dead; otherwise the time of sale awaits his death. The trustee has no option in the premises. George N. Walter died intestate and without issue, May 14, 1892; his father, John Walter, Sr., died April 12, 1907. The conversion took place as of the latter date. It is idle to speculate as to the time of the conversion, if the date of the death of the father and son had been reversed. The case must be decided upon the facts as they occurred; not as they might have happened. As a consequence, the children of Barbara King, who died August 24, 1904, and the children of John Walter, Jr., who died November 17, 1906, are excluded. They could not take by descent, for neither the mother nor the father had title at the time of their decease. They could not take as purchasers under the trust. The term "children" standing alone, is not broad enough to include grandchildren. These propositions are abundantly sustained by the authorities.

(*a*) As to the time of the vesting of the title.

If a sale is or is not to take place as a particular event may or may not happen, no conversion takes place until the happening of the event and a sale accordingly.

In the leading case of Fletcher *vs.* Ashburner, 1 Bro. C. C., 497, the doctrine of conversion was thus enounced:

> "That money directed to be employed in the purchase of land, and land directed to be sold and turned into money, are to be considered as that species of property into which they are directed to be converted; and this in whatever manner the direction is given, whether by will, by way of contract, or otherwise."
>
> 1 Leading Cases in Equity, part 2, top page, 1120.

In the case of Keller et al. *vs.* Harper et al., 64 Md., p. 74, the question in the case was as to whether certain real estate, under the terms of the will before the court for construction, was converted, as of the date of the death of testator, or not until the sale of the property, many years after his death. Judge Yellott, in deciding the case, said on page 82:

> "By a fundamental principle in equity, long established and universally recognized, land is considered as converted into money even anterior to a sale when a sale has been directed; and courts of equity will deal with such real estate as personalty, in anticipation of the consummation of the testator's intention when such intention has been unequivocally declared. There must, however, be an imperative and unequivocal direction to sell the real estate, and when the power to sell requires the consent of the parties interested, there is no conversion until such consent is given. And when the sale is dependent upon a contingency, there is no transmutation until the contingency has happened. As said by Lord Cranworth Chancellor, 'We must consider the property as converted, from the time when it ought to have been converted. Ferrie *vs.* Atherton, 28 Eng. Law and Equity Rep., 1.' "

Pomeroy, in discussing the time from which conversion takes effect, says:

> "This, like all other questions of intention, must ultimately depend upon the provisions of the particular instrument. The instrument might, in express terms, contain an absolute direction to sell or to purchase at some specified future time; and, if it created a trust to sell upon the happening of a specified event, which might or might not happen, then the conversion would only take place from the time of the happening of that event, but would take place when the event happened, exactly as though there had been an *absolute direction to sell at that time.*"
>
> Pomeroy Eq. Juris., sec. 1162, vol. 3, 3d Ed.

In the case of Ward *vs.* Arch, 15 Sim. (Eng. Ch.), 389, testator made certain bequests and then provided that in case there should not be sufficient to pay an annuity to his wife of £300 per annum, then, upon *trust, to sell and dispose of all and every part of said real and personal estates. There was not enough to pay the annuity at* any time, but no part of the estate was sold. After death of the wife, the question arises was there a conversion of the real property into personalty by the will? Held, that the testator's real estate was converted out and out into personalty by the will.

In the case of Moncrief *vs.* Ross, 50 N. Y., 431, testator devised the net income of his real estate to his mother, directing that upon her death, the executor sell and dispose of the real estate, and divide it as therein directed. The mother died before testator, and the executor did not sell upon the death of testator. Held, that by this direction the real estate was equitably converted into money, and will be so regarded for the purpose of distribution of income of real estate arising after death of testator, and coming into the hands of the executor.

In McClure's Appeal, 72 Pa. St., 414, the testator directed in his will that his real property be converted upon his death, which was not done. Held that there was a conversion as of the time of death of testator, and the death of a legatee, after that time, would not shut off her husband from taking her share of the estate. Also held that the direction to convert must be positive and explicit, irrespective of all contingencies, and independent of all discretion; and that the same rule as to conversion, applies as to both wills and deeds.

In the case of Bank *vs.* Rice, 143 Cal., 265, real estate was devised to widow during her life, to be sold by executor after her death and distributed. The result of such direction was to convert the land into personalty, to take effect when the executor had power to make the sale.

On this point the court said:

> "This was clearly expressed in Estate of Walkerly, 108 Cal., 652, as follows: 'The rule of equitable conversion merely amounts to this, that where there is a mandate to sell at a future time equity, upon the principle of regarding that done which ought to be done, will for certain purposes and in aid of justice consider the conversion as effected at the time when the sale ought to take place, whether the land be then really sold or not. But whenever the direction is for a future sale, up to the time fixed, the land is governed by the law of real estate.'"

Where there is no gift, but a direction to divide and pay at a future time or on a given event . . . the vesting will be postponed till after that time has arrived . . . unless from particular circumstances a contrary intention is to be collected.

> 2nd Williams on Executors (Seventh Am. Ed.), bottom page 1096.

Lord Chancellor Loughborough said:

> "In this will . . . there is no gift till the distribution; the object of the distribution is pointed out to be among the persons named, or the survivors or survivor of them."

Brograve *vs.* Winder, 2 Vesey, Jr., 634.

A devise in trust for the benefit of testator's brother and daughter's children, and after the decease of the daughter and her children, if they should die under 21, the residue to be distributed among testator's relations.

It was held that this meant the testator's next of kin, as they stood, not at his death, but at the time of distribution.

Jones *vs.* Colbeck, 8 Vesey, Jr., 38 (Rolls, 1802).

A testator devised his land to his wife for life or during widowhood, and directed his executors after her death or remarriage to sell the land and that the "proceeds hereof be equally divided between all my children or their descendants, giving to the descendants of such as may die, the same share that the parent would be entitled to if living." It was held that the interest of the children did not vest on the death of the testator, but that only children and descendants who survived the preceding estate were entitled to share in the distribution.

Burnsides Admr. *vs.* Wall., 9 B. Mon., 318.

A testator devised to his granddaughter, Elizabeth, for life, certain property, "and at her death to be equally divided among the children of said Elizabeth then living, or the descendants of such children." It was held, first, that the remainder vested in the descendant class as a class and not individually in the persons composing such class, and that the entire subject of the gift survived

to and vested in the persons constituting said class at the period when distribution was to be made; that the interest of each member of the class was a mere possibility, or a contingent remainder, and did not vest in interest until the death of Elizabeth.

Nichols *vs.* Guthrie, 109 Tenn., 536.

A testator devised his farm to his executors in trust to be managed by them until his debts were paid, then to his wife for life. Then came this provision:

> "I devise that my executors, or the survivor of them, after the death of my said wife, shall sell said last mentioned farm, either at public or private sale, and that the proceeds thereof be divided equally between my brothers and sisters and their heirs—the children of any that may be dead to have the shares of their deceased parents."

It was held that upon the death of a brother or sister, leaving the widow surviving, his or her lineal descendants would take per stirpes decedent's share. The court said:

> "If these legacies vested in interest, absolutely, at the testator's death, then upon the subsequent death of a legatee, during the life of the widow, his legacy would pass to his administrator or other personal representative. But this the testator did not intend. For, he has directed that the share of any one who would, if living, be entitled to a part of the fund, shall, in the event of the previous death of such contingent legatee, be paid to his or her children. The gift itself, and not merely the time of payment, remained contingent, therefore, during the life of the widow. *The persons entitled to the enjoyment of the fund could not be ascertained till her death.*"

It will be observed by the terms of the devise that no interest was given in the farm in question, nor its proceeds, to testator's brother and sisters, or any of them,

by way of direct devise or bequest. The gift is to be found only in the designation of the persons among whom the distribution is to be made. The thing to be distributed was money and not land.

Richey *vs.* Johnson, 30 Ohio State., 288.

So where a devise provided that "when my youngest child arrives at full age I desire that the real estate be equally divided among my children, their heirs, or survivors of them," it was held that the children took no vested interest until the youngest child attained the age of 21 years. The clause in the will quoted contains no words of gift or grant except the direction for a division. The court held that the contingency was annexed to the gift itself, and not to the time when the division or payment was to be made.

McClain *vs.* Capper, 98 Iowa, 145.

A testator devised in trust certain property to pay the income to his son, two daughters and two grandchildren. Said income to be paid to them or their children or descendants, and if any should die leaving no descendants, to such decedent's next of kin. One of the daughters died without issue, leaving her estate by will to her husband. It was held that the husband took nothing from her father's estate. The court, in deciding the case, said:

> "Ordinarily the word descendants includes issue of the body in every degree, and it does not mean the next of kin and heirs generally. Furthermore, the will contains no words of gift, but a direction to pay or distribute at a future time and in quarterly payments, an uncertain sum, and such a condition is generally held to create no more than a contingent interest."

Twaites *vs.* Waller, 133 Iowa, 84.

A testatrix devised to her two sons certain personal property for life and after their death the principal to go to their living children at the age of 21. It was held that this meant children living at the death of the surviving life tenant; that the estate consisted mainly of real property, and while the will did not expressly direct the sale of the real estate, the court held that by necessary implication, in order to effect the purposes of the will, such sale was necessary; that the sons were to have the income of the property for their lives and the life of the survivor, and on their death the then living children took the principal. The court held that this impressed the real estate with the character of personal property. The court says that the will contains an express declaration that the body of the property shall go to such children as are living at the termination of the life estates.

Benner *vs.* Mauer, 133 Wisconsin, 325.

In the case of McCartney *vs.* Osburn, 118 Ill., 403, 412, 423, the will authorized the executors to convert testator's real estate into money in their discretion, and to invest the proceeds derived from such sale and all other moneys, and hold the same "until there is a final division made of my estate," which testator wished to be divided equally between the heirs of Henrietta "that may be living at the time of said division." The will expressed a wish that the division should not be made until the youngest child of Henrietta arrived at the age 21 years. There were no words of gift or devise in the will, but simply a direction to make a division of the property at a fixed period. The court held that the time was made descriptive of the class that was to take, and that the gift did not vest in interest until the time of payment arrived. In discussing this point, the court said:

> "The same distinction which is taken between a gift on a particular day and a gift to be paid on

> such day, is also taken in a case like the present, where there is a simple direction to divide at a specified time, and where there is an express gift accompanied with a direction to divide at such specified time. In the first case the *gift does not vest until the time of division.* In the second it vests at the testator's death and the division only is postponed."

The court refers to 2d Jarman on Wills, 455 et seq., and quotes from p. 457, which should be 797. It further says:

> "When the only gift is in the direction to pay or distribute at a future time, the case is not to be ranked with those in which the payment or distribution is deferred, but is one in which time is of the essence of the gift."

A testator devised lands to his wife for life, remainder—

> "to my three children equally to be divided between them, to have and to hold to them for their lives, and after the death of either of them their share to be equally divided amongst their children or their descendants, giving to the descendants of each child one share, *to the girls for life remainder to their children and descendants.*"

It was held that the daughters took an estate for life only, and that the remainder was contingent; because, until the death of a daughter it could not be determined what, if any, children would have been born her, or whether such child died before her leaving descendants, and that only children or descendants living at her death would take. The court, in deciding the case, said:

> "The conclusion can scarcely be resisted, that the thought of the testator was to place his daughter's share of his estate beyond the interference or control of her husband, in the event of her marriage, and make provision alone for her

> and her lineal heirs. The daughter, whose share was in question did not marry until testator's death."
>
> Bates *vs.* Gillett, 132 Ill., 287.

A testator devised a farm to his son for life and then to his children, if any; if none, to his nearest relatives. It was held that the remainder was contingent, so that a son of the devisee who died before his father took nothing. The same will left the residue of testator's real and personal property to be used in educating his children, the "remaining amount, if any, to be kept on interest until they were 21 years of age, then the amount is to be divided between said grandchildren." This remainder was held to be contingent; that it was a gift to a class accompanied by a postponement of the division of the legacy until a period subsequent to the testator's death, and that only those of that class share who are living at the time fixed for distribution.

Webber *vs.* Jones, 94 Me., 429.

A testator devised certain property in trust for the use of his wife and daughter with provision that in case of the death of the daughter without issue her mother surviving, one-half of the estate on the death of the widow was "to be divided equally amongst the grandchildren of my deceased father," and it was held that only the grandchildren of testator's father who were living when testator died took under this clause. In deciding the case the court said:

> "Testator must have had in mind those who answered to that description at the time of distribution. He was speaking of the grandchildren of his deceased father, not at the time of his own death, not at the time of the death of his daughter, but at the time of his wife's death. 'At her death' he says the division is to be made. *There are in*

> *the will no words importing a gift to his father's grandchildren, except in the direction to make the division at the time of his wife's death.* His language must refer to that time, the time when the division is to be made."

The court cited Matter of Baer, 147 N. Y., 348, and numerous other cases in support of its conclusion.

Storrs *vs.* Burgess, 101 Maine, 26.

A testator devised in trust property to his daughter for life, then to his sister for life, and upon the sister's death to convey the remainder to the children and lawful heirs of my brother, Harmon Hendricks, deceased, "to share and share alike per stirpes." It was held that the heirs of Harmon who were living at the time of the sister's death took under this provision of the will. Harmon Hendricks had ten children living at the time testator died, all of whom died before the period of distribution. Some of them left wills. The court says that if the interest vested at the death of testator there would be brought into the class of devisees "persons who are not of her (testatrix') blood and who were wholly unknown to her in her lifetime." The court held that where a final division and distribution is to be made among a class, the benefits of the whole must be confined to those who come within the proper category when the distribution is to be made. In deciding the case the court said:

> "It is a case, then, where, as the cases express it, 'futurity is annexed to the substance of the gift' and warrants the application of the principle that where a future interest is devised, not directly to a given person, but indirectly through the exercise of a power conferred upon trustees, the devise is designed to be contingent, and survivorship at the time of distribution is an essential condition to the acquisition of an interest in the subject of the gift."

In the Matter of Baer, 147 N. Y., 348.

To the same effect is Dougherty *vs.* Thompson, 167 N. Y., 472.

In a devise in trust, with directions to pay certain proportions of gifts to children on their arriving at a certain age, it was held that their shares did not vest, because the gift was through direction to convey and not a direct gift to the beneficiaries, and there was no vesting until the time to convey arrived. The court said:

> "The direct gift to the executors and the absence of any gift of capital to the children in the first instance show there was no intent to vest title in them prior to the date named for distribution. A gift of capital to the children was through the direction to convey, and there was no vesting until the time to convey came around."
>
> Lewisohn *vs.* Henry, 179 N. Y., 352.

A testator devised property to trustees for his sister for life, on her death to pay over and distribute the estate to her children. It was held that the widow and children could not unite and give a good title, because the children's interest was not vested. They, or some of them, might die before their mother, in which case the title would pass by inheritance from the testator. On the point the court said:

> "The rights of the children are something less than absolutely vested rights. No devise or bequest is made to them directly, and no direct gift is made to them. They are to receive the bounty of the testatrix from the executors, and not until after the death of their mother. They will then take as members of a class, to wit, the children of their mother."
>
> In re Hogarty, 70 N. Y. Supp., 428, affirmed by Appellate Division, 62 App. Div., 79.

The devise to trustees to pay eleven annuities, and on the death of the last annuitant the residue of the accumulated interest *then* to be equally divided among

testator's grandchildren per stirpes. It was held to give the grandchildren only a contingent interest; that if a grandchild should die during the life of any of the annuitants his interest would fail; his issue would not take in his place. The court said:

> "It is true that there are no words of survivorship, but it is as if the testator took his stand at the time of the death of the last life annuitant and said: 'I direct the remainder and its accumulations to be divided amongst my grandchildren,' in which case no words of survivorship would be necessary, and those living then would take."

The court also held that the general scheme of the will intended that the interests should be construed as contingent, and that the word *then* in the residual clause had reference, *not only to the period of distribution, but also to the persons who should take.*

Hale *vs.* Hobson, 167 Mass., 397.

A devise in trust for the benefit of testator's daughter and wife, and if upon the death of the survivor of them there should be no living descendants of the testator, the trust fund was to be distributed among testator's right heirs, was held that the distribution of the remainder should be among those who were heirs when the period of distribution arrived. The court in its decision referred to the fact that the will contained no words of present gift, but the gift itself must be inferred from the direction to pay.

Boston Safe Deposit Co. *vs.* Blanchard, 196 Mass., 35.

A testator devised property to his son and two daughters, with a proviso that on the death of the last survivor of them the property should be divided between the "children, lawful heirs of my aforesaid children."

It was held that the gift to the grandchildren was contingent and could not vest unless they were living at the time of the death of the last surviving child of the tetator, children of the three children to whom the life estate was given. The court approves the rule that when the direction is to pay, the bequest or devise is not vested until the time of payment or distribution is to take place, by the terms of the will.

Reilly *vs.* Bristow, 105 Maryland, 326.
Cherbonnier *vs.* Goodwin, 79 Md., 55.

The point under discussion in this case is clearly within the rule of interpretation established by this line of authorities. The rule itself is thus stated by the court in the case of McCartney *vs.* Osburn, 118 Ill., 403:

> "If, however, the element of futurity is annexed to the gift itself, and is not merely indicative of the time of payment, *or if the time of payment is made descriptive of the class that is to take*, the gift will not vest in interest till the time so fixed for payment or distribution has arrived."

Applying this rule of interpretation to the limitation in the deed in the case at bar, but one result can be reached, to wit, the equitable interest in remainder, did not vest until the death of John Walter, Sr. It was an executory interest, and was locked up in the trustee, until the events happened which were to call it forth. These events were the death of George N. Walter, intestate, leaving no children or the issue of children, him surviving, and the death of John Walter, Sr. The "surviving children" of John Walter, Sr., were uncertain until these events happened, and were made definite when they took place. *There is no gift of the remainder, except in the direction to sell and divide the proceeds; not only is the element of futurity annexed to the gift itself, but the time of payment is made descriptive of the class who are to take.*

(*b*) As to the meaning of the word "children."

"The technical legal import of the word 'children' accords with its popular signification, and does not include grandchildren or remoter descendants. The term is never extended to include grandchildren or any persons other than immediate descendants in the first degree of the person named as ancestor, in the absence of something showing a contrary intent."

A. and E. Ency. Law, 2d. Ed., vol. V, p. 1085, and cases cited.

This question arose in the case of Adams *vs.* Law, 17 How., 417, 421, which went up from the Circuit Court of the District of Columbia, and the court in construing the phrase depart this life in the lifetime of said Thomas Law, leaving issue of said marriage, one or more children then living, said:

"Does this description include grandchildren? We think it does not.

The word 'issue' is a general term, which, if not qualified or explained, may be construed to include grandchildren as well as children. But the legal construction of the word 'children,' accords with its popular signification, namely, as designating the immediate offspring. See Jarman on Wills, 51. It is true, in the construction of wills, where greater latitude is allowed, in order to effect the obvious intention of the testator, grandchildren have been allowed to take under a devise 'to my surviving children.' But even in a will, this word will not be construed to mean grandchildren, unless a strong case of intention or necessary implication requires it. Hence, it is decided that a power of appointment to children will not authorize an appointment to grandchildren. Robinson *vs.* Hardcastle, 2 Bro. Ch., 344; 4 Kent's Com., 345. In Reeves *vs.* Brymer, it is said by Lord Alvanley, that 'children may mean grandchildren when there can be no other construction, but not otherwise.' " 4 Ves.,

> 697. . . . "Hence, in the construction both of wills and deeds, where the instrument has not, so carefully as in the present case, limited the word 'issue' to children living, etc., but where the term is used without qualification, and is in another part of the same instrument supplied by the word child, or children, as a synonym, the courts have uniformly restrained its signification to children."

In Tayloe *vs.* Mosher et al., 29 Md., 444, the court holds that "this word (children) in this connection, can not be held to extend to and embrace grandchildren."

In Taylor *vs.* Watson et al., 35 Md., 519, the court said:

> "All the authorities we have consulted, establish the proposition that the word 'children' is to be construed as the 'immediate offspring,' and not inclusive of 'grandchildren,' unless where there are no children, or necessary implication requires it. 2 Jarman on Wills, 70 (in mar.), and authorities in note 1; 2 Wm's. Ex'rs., 802."

Thomson *vs.* Ludington, 104 Mass., 193. A testator by his will gave his estate to his widow during her life or widowhood, and at her decease or marriage—

> "to such of my children as shall then be living, share and share alike; the names of my said children are A., B., C., D., and E., to them and to their heirs and assigns forever."

B. survived the testator, but died before the death or marriage of the widow, and left a child born in the testator's lifetime. The court's opinion is:

> "The devise at the death or marriage of the widow 'to and among such of my children as shall then be living, share and share alike,' gives a contingent remainder to such of the children as shall be living when the contingency of such death or marriage happens. Olney *vs.* Hull, 21 Pick., 311.

> In the next clause, the testator gives the names of 'my said children,' that is, of all those already described as 'my children;' for he could not foretell which of them would be living at a future time; and this clause does not extend the effect of the previous one, by which such of them only as shall be living upon the happening of the contingency are to take. The further words 'to them and their heirs and assigns forever,' do not describe the devisees, but the quantity of their estate, or, in other words, merely show that the estate to be taken by virtue of the previous words is an estate in fee. The daughter who died after the testator and before his widow therefore took no estate, and none passed to her child."

In the case of Cromer *vs.* Pinckney, 3 Barb. Ch., 466, the court said:

> "The word children, in its primary and ordinary sense, means the immediate legitimate descendants of the persons named. And where there is nothing to show that the testator intended to use it in a different sense, it will not be held to include illegitimate offspring, stepchildren, children by marriage only, grandchildren, or more remote descendants. Radcliffe *vs.* Buckley, 10 Ves., 195; Earl of Oxford *vs.* Churchill, 3 Ves. & Bea., 69; Izard *vs.* Izard's Ex'rs, 2 Desaus. Rep., 309; Gardner *vs.* Heyer, 2 Paige's Rep., 11; Hussey *vs.* Berkeley, 2 Eden's Rep., 149."

In the case of Marsh *vs.* Hague, 1 Edw. Ch. (N. Y.), 174, 186, the court said:

> "Grandchildren and great-grandchildren do not take under the word 'children,' except from necessity and where the will would otherwise remain inoperative or where the testator has clearly shown by other words he did not intend to use the term according to its actual meaning, but in a more extensive sense, . . . and hence it follows that if there be a child or children, a grand-

> child or grandchildren can not be permitted to participate in a devise or bequest to 'children.' Crook *vs.* Brooking, 2 Vern., 107; Reeves *vs.* Brymer, 4 Ves. Jr., 692; Radcliffe *vs.* Buckley, 10 ib., 195; Earl of Oxford *vs.* Churchill, 3 V. & B., 59."

These authorities sufficiently establish the doctrine that the word "children" does not include grandchildren. There is nothing in the context to show that the grantor in the deed intended any other than the usual meaning to be attached to the word.

The children of Barbara King and John Walter, Jr., must therefore be excluded from any participation in the proceeds of sale of the property in controversy. This was the conclusion reached by the court below.

Third.

Does "surviving children" mean all of the surviving children of grantor's first wife, or only such of his children, named in the trust, as should be living at the time of the death of John Walter, Sr.?

The answer to this question is found in the deed itself, read in the light of the circumstances attending its execution. The deed was made "from considerations of blood and natural affection." Its object was to make provision for three of his children by his first wife, to wit, "Catherine Magdalena Sophia Walter, George N. Walter, and Mrs. Barbara King." The specific declaration of the purpose for which the deed was given, and the designation by name of the beneficiaries thereunder, limit the phrase "surviving children" to the child or children, named in the deed, who may be living at the death of the grantor. No other construction gives due regard to the expressed purpose of John Walter, Sr., in making the deed. The phrase standing alone, with no context to modify its significance, would mean all of the grantor's

children by his first wife, who should survive him; but in this deed the grantor was making provision for three of his children, and their children and issue, if any, and for no other persons.

It was his purpose to treat the beneficiaries under the deed in trust alike. To this end he assigned and delivered to his said trustee, a certain bond for the sum of $10,000. This bond was to be held in trust by the trustee, and the interest as it accrued due thereon, paid to John Walter, Sr., for his life; upon his death, the proceeds thereof were to be invested in real estate selected by the said Catherine, with the approval of the trustee, and conveyed to and held by him in trust to pay the rents and profits thereof to the said Catherine for her life, and upon her death to hold the same for the use of her children, in fee. He also assigned and delivered certain notes secured by a deed of trust upon real estate, amounting to $7,300, to said trustee, to be held by him, in trust, either to purchase the property securing the same at foreclosure sale directed to be made, or, on payment of the notes, to invest the proceeds in real estate to be selected by Barbara King, with the approval of said trustee; in either event to have the title to said real estate conveyed to him, the said trustee, in trust, to collect the rents and profits thereof, and pay the same to grantor, for life, and upon his death to hold the same in trust for the said Barbara King, for her life, and upon her death, for her children, in fee. The purpose of these assignments and transfer of securities was declared by the grantor in the one case to be "in order to equalize the division of my property among my *said* children," and in the other "in order more fully to equalize the division of his property among his children." There was not only equality as to the value of the property to be held in trust for the three children, but the estate of each in the property held for each of them, respectively, was

the same. Each had, by the terms of the trust, a vested equitable life estate, to take effect in enjoyment, on the death of the grantor. The equitable remainder in fee, went to the surviving children, or their issue, on the death of each of the equitable life tenants. In marked contrast was the provision made for William and John Walter, Jr. They each got a fee simple estate in property of equal value to that in which each of the three children got only an equitable life estate. The equality intended by the grantor, and effected by the instrumentality of the deed in trust, was an equality of provision for the beneficiaries thereof. He did not make a provision for them equal in value to that made for the children outside of the trust. It is respectfully submitted that the equalization of the grantor's property among all of his children, was not, as stated by the court below, "the determining thought in the mind of the grantor." He did intend to make an equality of provision for the children inside the trust, but not an equality of provision for all of his children. Why this discrimination between the two classes? Was that the best way "to make an equal division of his property" among his children, which the court below argues was the grantor's determining purpose in making the deeds? It is respectfully submitted that the interpretation put by Justice Barnard upon this point in the case, is more in accord with the intent of the grantor, than is that of the court below. He said:

> "Neither would it be natural for him to contemplate the two older children, John and William, who had already received their portion of his estate, by way of advancement, by deeds absolute; and he must therefore have had in mind only those three younger children by his first marriage, when he said that the proceeds of the sale of the portion which would otherwise have gone to one of them, or his issue, had he lived, should be paid over in equal portions to the

surviving children of the said John Walter, Sr. He meant the same by these words, as if he had used the one word 'survivors.'

"In other words, it seems to me that what the grantor intended to do, was to have such portion of his real estate sold, after his death, and the proceeds paid over in equal portions to the two surviving children, who were co-beneficiaries of the deceased child under the said deed; and if the scrivener had used the word 'said' before the word 'surviving,' there would probably have been no occasion for construing this document (Rec., p. 71)."

In conclusion, Catherine M. S. Frosch is entitled to the whole property—

First: Because the equitable estate in remainder in the property in which George N. Walter had an equitable life estate, did not vest until the death of John Walter, Sr., to wit, on April 12, 1907.

Second: Because Barbara King and John Walter, Jr., died before John Walter, Sr., to wit, on August 23, 1904, and November 17, 1906, respectively. As the title to the property was not vested in them at the time of their death, it could not descend to their children.

Third: The children of Barbara King, deceased, and John Walter, Jr., deceased, can not take as purchasers, because they are not within the class named in the deed as entitled to the equitable interest or remainder, upon the contingency which has happened.

Fourth: The grantor intended by the deed, to provide for his children named therein, or their children or issue, and for no other persons.

Respectfully submitted.

BENJAMIN F. LEIGHTON,
RALPH P. BARNARD,
GUY H. JOHNSON,
Attorneys for Catherine M. S. Frosch.

INDEX.

	Page.
Statement of the Case	1
Conversion Immaterial	2
Remainder Vested on the Death of George N. Walter Without Issue	4
Doctrine of Vested Remainders	4

Authorities Citied.

Bank *vs.* Rice, 143 Cal., 143	2
Blanchard *vs.* Blanchard, 1 Allen, 227	5
Cropley *vs.* Cooper, 19 Wall. (U. S.), 167, 175	3
Hauptman *vs.* Carpenter, 15 App. D. C., 524	3
McArthur *vs.* Scott, 113 U. S., 340	4
McClure's Appeal, 72 Pa. St., 414	2
Moncrief *vs.* Ross, 50 N. Y., 431	2
Myers *vs.* Adler, 6 Mackey (D. C.)	3, 4
Poor *vs.* Considine, 73 U. S., 458, 481	4
Potter *vs.* Couch, 141 U. S., 296	4
Walkerly, Est. of, 108 Cal., 627, 652	2
Ward *vs.* Arch, 15 Sim. (Eng. Ch.), 389	2

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 192.

CATHERINE M. S. FROSCH ET AL., APPELLANTS,

vs.

WILLIAM WALTER, APPELLEE.

Brief for Henry C. Walter and Frederick L. Walter, Appellants.

This is an appeal from the decree of the Court of Appeals of the District of Columbia construing the deed in trust executed and delivered by John Walter, Sr., on June 18, 1869.

Statement of the Case.

The facts are undisputed and have been so fully stated in other briefs as to require slight reference here. These appellants are the only children of John Walter, Jr., who was the trustee under the deed in question, and one of the children of the grantor. He died November 17, 1906, and therefore survived George N. Walter, who died May 14, 1892. These appellants claim that their father, John Walter, Jr., by his survival of George, took a vested, present right, though postponed in enjoyment only, to share in the distribution of George's portion, whether realty or personalty.

ARGUMENT.

1. The essential ground on which the Court of Appeals excluded these appellants from participating in the distribution was that their rights depended upon the time of conversion pursuant to the grantor's direction to sell and distribute proceeds. (See opinion below.) It is respectfully submitted that neither the matter nor the time of conversion determines the vested or contingent character of a remainder, and that these appellants should not have been excluded on that ground. The form in which the grantor's property might go to his children, in the respect of its being real or personal property, could not affect their right to it any more than the correlative right of reconversion which frequently exists.

> "The rule of equitable conversion merely amounts to this, that when there is a mandate to sell at a future time, equity, upon the principle of regarding that done which ought to be done, will for certain purposes and in aid of justice construe the conversion as effected at the time when the sale ought to take place, whether the land be then really sold or not. But whenever the direction is for a future sale, up to the time fixed, the land is governed by the law of real estate."
>
> 108 Cal., 627, 652, Est. of Walkerly.
> 15 Sim. (Eng. Ch.), 389, Ward *vs.* Arch.
> 50 N. Y., 431, Moncrief *vs.* Ross.
> 72 Pa. St., 414, McClure's Appeal.
> 143 Cal., 143, Bank *vs.* Rice.

If this doctrine be correct, and it was asserted by the court below, the devolution of the portion of George N. Walter at the time of his death was governed by the law of real estate, because the grantor was still alive and the time of sale had not arrived, so that this property passed under the deed as real estate and not as personalty, but in any event its vested or contingent character was not

established thereby and the principal ground for excluding these appellants, relied on by the court below, fails.

In the District of Columbia the doctrine of conversion does not affect the character of a remainder.

> "That the estate is ordered to be sold and the proceeds divided after the determination of the life estate, thereby working an equitable conversion of the estate or interests in remainder, is of no importance in determining the character of the remainder."
>
> 16 App. D. C., 524, Hauptman *vs.* Carpenter.

See, also—

> 19 Wall. (U. S.), 167, 175, Cropley *vs.* Cooper.
> 6 Mackey (D. C.), 515, Myers *vs.* Adler.

In 6 Mackey (D. C.), 515, Myers *vs.* Adler, Mr. Justice Cox, speaking for the court, said:

> "The land was to be sold and turned into money for the benefit of all these legatees. It was charged, not with a legacy but with a trust. It makes no difference whether the trustee was to hold the land and apply the rents and profits to the use of the beneficiaries or to sell the land and divide the proceeds among them. In either case the devise was a devise of real estate for their exclusive benefit. It was substantially and primarily a devise of the land itself, and not a devise of a personal legacy charged upon the land."

In the case at bar, the known and expressed object of the grantor was to divest himself of all title to the property in question (beyond the reservation of the rents and profits to himself for life) for the benefit of his children. Had he any other object in ordering a sale than to facilitate the distribution in the last contingency that could arise in his family, namely, the equal division of any portion of his estate which might revert by the death of

a child without issue? If he had no other object his language should not be construed to prevent the ultimate remainder in George's portion from vesting upon George's death in the surviving children of John Walter, Sr.

2. These appellants contend that upon the death of George N. Walter, without issue, the contingent remainder to the "surviving children" of the grantor became a vested remainder in the living children of John Walter, Sr. They do not contend that their father, John Walter, Jr., took legal remainder.

No legal title vested until the division of the proceeds, but an equitable title vested upon the execution of the deed.

141 U. S., 296, Potter *vs.* Couch.
113 U. S., 340, McArthur *vs.* Scott.

John Walter, Jr., was a survivor of George N. Walter and he was among the class from whom the "surviving children" of the grantor must be drawn. As the sale and distribution was postponed only to the end of the grantor's life and for his convenience (Myers *vs.* Adler, supra), all the conditions for the vesting of the remainder were present. The case of Poor *vs.* Considine, 73 U. S., 458, 481, seems to be controlling in this connection and the statement of the doctrine as adopted therein from the Supreme Court of Massachusetts is most apposite to the case at bar.

> "Where a remainder is limited to take effect in possession, if ever, immediately upon the determination of a particular estate, which estate is to determine by an event that must unavoidably happen by the efflux of time, the remainder vests in interest as soon as the remainderman is *in esse* and ascertained, provided nothing but his own death before the determination of the particular estate, will prevent such remainder from vesting in possession; yet, if the estate is limited over to

another in the event of the death of the remainderman, before the determination of the particular estate, his vested estate will be subject to be devested by that event, and the interest of the substituted remainderman, which was before either an executory devise or a contingent remainder, will, if he is *in esse* and ascertained, be immediately converted into a vested remainder."

1 Allen, 227, Blanchard *vs.* Blanchard.

The above rule applies as well to equitable as to legal remainders, and as there was no remainder over to work a defeasance on the death of John Walter, Jr., these appellants succeed to his rights which have now vested in possession.

Respectfully submitted.

OLIVER METZEROTT,

Attorney for Henry C. and Frederick L. Walter.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 192.

CATHERINE M. S. FROSCH ET AL.,
APPELLANTS,

vs.

WILLIAM WALTER.

Brief on Behalf of Oscar Walter, Adolph Walter, Hugo Walter, and Pauline Crow, Appellants.

I.

Statement of Case.

John Walter, Sr., for many years a resident of the city of Washington, D. C., died in April, 1907, having had the fo lowing children:

1. John Walter, Jr. 2. William Walter. 3. Barbara Walter King. 4. George N. Walter. 5. Catherine M. S. Frosch.	Children of Appolena, his first wife.

There was no issue of his marriage to Catherine, his second wife.

1. Oscar Walter. 2. Adolph Walter. 3. Hugo Walter. 4. Pauline Crow.	Children of Wilhelmina, his third wife.

There was no issue of his marriage to Johanna, his fourth wife.

Of the first group of children, John Walter, Jr., died intestate in November, 1906, leaving two children, Henry C. Walter and Frederick L. Walter, appellants here.

William Walter is still living and is the appellee here.

Barbara Walter King died in 1904 intestate, leaving eight children, namely, Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. Edwards, and Mabel D. King, appellants here.

George N. Walter died in 1892 intestate and without issue. Catherine M. S. Frosch is still living and is one of the appellants.

The four children of the third marriage of John Walter, Sr., namely, Oscar Walter, Adolph Walter, Hugo Walter, and Pauline Crow, are all living and are appellants here.

By deed dated June 18, 1869, and recorded September 10, 1872, in Liber 696, folio 311, of the land records of the District of Columbia, and appearing on page 7 of the record, John Walter, Sr., conveyed to his son, John Walter, Jr., certain properties and securities in trust for certain purposes, reciting that from considerations of blood and natural affection, he was desirous of making provision for three of the five children of his first marriage, namely, Catherine, George, and Barbara, having already made provision for the two other children of his first marriage by other deeds. At the time of the execution of this deed, John Walter, Sr.'s, first wife had died and he had married again. By the deed in question he conveyed to John Walter, Jr., as trustee (1) lot 3, in square 347; (2) parts of lots 5 and 6, in square 323, the first being premises 1011 E Street northwest, and the second being part of the property now occupied by the Washington City Post-office; (3) part of lot 11, in square

293, located at Thirteenth and D Streets northwest, and (4) sublot 2, in square 292, known as the Heidenheimer property, which is the property in dispute in trust. To pay all the income therefrom to the grantor for his life, and to pay off the costs of completing the improvements at 1008 F Street northwest, theretofore conveyed by John Walter, Sr., to John Walter, Jr.; next, he directed that the trustee, after the death of the grantor, should pay $2,000 from the rents of certain other property given to John Walter, Jr., and William Walter, to the grantor's wife Catherine and her children by a former marriage of hers; next, after the death of the grantor, the trustee was directed to hold lot 3, in square 347, for Catherine M. S. Frosch, then Catherine Walter, for her life, and after her death, to her children in fee simple; he next gave a certain bond for $10,000 for the benefit of Catherine M. S. Frosch for her children; next he directed his trustee to hold lots 5 and 6, in square 323, and also lot 11, in square 293, for Mrs. King and her children, and also a certain note for $7,300 for Mrs. King and then for her children absolutely; next the deed proceeded as follows:

> "In trust, that the said party of the second part (John Walter, Jr.) shall from and after the decease of the said John Walter, Sr., hold the following property, to wit: the fourth parcel of land hereinbefore described as all that piece or parcel of land lying and being in Washington city, in the District of Columbia, which is known and described as lot numbered two (2) in the subdivision of lot numbered four (4) in square numbered two hundred and ninety-two (292) in the said city, as laid off by Nicholas King, surveyor, beginning for the same at a point in the line of Pennsylvania avenue, thirty-six (36) feet three (3) inches distant from the northwest corner of said square, and running thence southwardly in a line perpendicular to the line of said avenue forty-three (43) feet, two and one-

fourth (2¼) inches, thence &c., as hereinbefore described to the place of beginning, together with all and singular the appurtenances thereunto belonging. In trust to pay over to the beforementioned George N. Walter, the youngest son of the said John Walter, senior, the rents, issues and profits of the said property for and during the term of his natural life and from and after his decease, to hold the said property for the use of all and every the children of said George N. Walter in fee and their heirs forever. And it is hereby further witnesseth that in the event of the death of any one of the above-mentioned children of the said John Walter, senior, to wit: Catherine, George and Barbara, without leaving any child or children or any issue of any child or children, then and in that case that the property held in trust by said trustee party of the second part for the benefit of the party then dying without issue shall be sold by said party of the second part, after the death of John Walter, senior, and the proceeds paid over in equal portions to the surviving children of the said John Walter, senior, party of the first part. And for a further condition to the above-described trusts, the said John Walter, junior, party of the second part shall have the power to sell all or any of said property therein above described, and on receipt of the consideration money, execute conveyances for the same and to reinvest the money therefor in other real estate or stocks or bonds at the request of the respective parties entitled to the benefit of said trusts."

Mrs. Frosch, who filed the bill in the trial court, claimed that the intention of the deed was to provide exclusively for the three children of the first marriage, namely, Catherine M. S. Frosch, Barbara King, and George Walter, and that the term "surviving children" referred to the survivors of those three, especially in view of the fact that the deed recited that William Walter and John Walter, Jr., had been otherwise provided for, and

that the deed did not contemplate future-born children.

George N. Walter died in 1892, leaving no children or descendants surviving him. John Walter, Sr., himself died in April, 1907, and the bill was filed in the following November, praying a construction of the will.

The contention of Oscar Walter, Adolph Walter, Hugo Walter, and Pauline Crow was that the grantor intended to provide for the three children of his first marriage, as he expressly states in the beginning of the deed, but that he only intended to provide for them during their lives, and for their children after them in fee, but that if any one of them died without children then he, postponing the time of distribution until after his (grantor's) own death, his children then surviving should take all of them equally.

At the time of John Walter, Sr.'s, death his children then living were Catherine M. S. Frosch, William Walter, Oscar Walter, Adolph Walter, Hugo Walter, and Pauline Walter, and our contention is that the children of the third marriage, whom we represent, should take four-sixths of this property, the other two-sixths going equally to Catherine M. S. Frosch and William Walter. If the court should be of the opinion that the children of John Walter, Jr., and Barbara King should share, then there would be eight interests, and our clients would take one-half of the property, the other half going equally to Catherine M. S. Frosch, William Walter, the children of John Walter, and the children of Barbara King.

II.

Assignments of Error.

1. The Court of Appeals of the District of Columbia erred in excluding the children of the third marriage of John Walter, Sr., from any share in the property in dispute.

2. The said court erred in holding that the said children of the third marriage of John Walter, Sr., were not his "surviving children" under a proper construction of the deed dated June 18, 1869.

III.

ARGUMENT.

The questions arising upon this record as they appear to us seem to be, namely:

1. What is the proper rule of the construction of the trust deed in dispute? Should it not be the same as in the case of a will, where the intention of the testator is the primary rule of construction?

2. Should the expressed intent on the part of the grantor in making the deed in question to provide for Catherine, George, and Barbara, three of the children of his first marriage, dominate and control the clear words in the deed itself, providing that after the grantor's death the property left to any one of these three children who should die without issue should go to the grantor's "surviving children?"

3. What is the true intent and meaning of the grantor in providing after his own death for his "surviving children?"

1.

The deed in question should receive the same construction as if it were a will.

It will be observed that although in form and in effect the instrument under consideration is a deed, it is in reality a testamentary disposition, and while, unlike a will, after its execution and delivery the grantor parted

absolutely with all his control and dominion over the property, and could not thereafter change the terms and effect of the deed, he does reserve to himself a life estate in the property. Nobody else in being or thereafter to be born should have any benefit whatever from the property until the grantor himself had died. He makes provision for his living children and for their unborn children or descendants. He postpones the time of enjoyment of the property by any of his descendants until the end of his own life. He directs that the only beneficial ownership to be enjoyed by any of his children or descendants shall not take effect until his own death, so that this is in reality a conveyance by the grantor of property to take effect after his death. It is in reality a testamentary disposition and nothing else, and therefore it should be given the effect that all testamentary dispositions should receive.

The rule is thus expressed by one of the text writers:

> "The first and universal qualification of this rule is, that it is the intention of the testator, expressed in his will, which is to govern; and this must be judged of exclusively by the words of the instrument, as applied to the subject-matter and the surrounding circumstances.
>
> "Where the general intent of the testator is clear, and it is impracticable to give effect to all the language of the instrument, expressive of some particular or special intent, the latter must yield to the former, but every expressed intent of the testator must be carried out where it can be. And the general intent overrides all mere technical and grammatical rules of construction. But the court can not remodel the will in order to meet a contingency not in the mind of the testator."
>
> 1st Redfield on Wills, star pages 434, 435.

And this doctrine is supported by innumerable cases.

In the case of Travers *vs.* Reinhart, 205 U. S., page 403, the court thus expresses the rule:

> "And the doctrine is invoked that the predominant idea of a testator's mind when discovered is to be heeded as against all doubtful and conflicting provisions which might of themselves defeat it; and the general intent and particular intent being inconsistent, the latter (the particular) must be sacrificed to the former—the general intent. This general doctrine is not controverted, but there are other cardinal rules in the interpretation of wills which must be regarded. Mr. Justice Story, speaking for this court, said that effect must be given 'to all the words of a will, if, by the rules of law, it can be done. And where words occur in a will their plain and ordinary sense is to be attached to them, unless the testator manifestly applies them in some other sense.' 'The first and great rule in the exposition of wills,' said Chief Justice Marshall, 'to which all other rules must bend, is that the intention of the testator expressed in his will shall prevail, provided it be consistent with the rules of law.' The same thought, in substance, was expressed by Lord Chancellor Eldon, who said that 'where words have once got a clear, settled, legal meaning, it is very dangerous to conjecture against that, upon no better foundation than simply that it is improbable, the testator could have meant to do one thing by one set of words, having done another thing, using other words, as to persons in the same degree of relation to him.' It would seem clear that the words 'without leaving a wife or child or children' where they first appear in the above general provision, were purposely chosen. They appear three times in the will, and their usual meaning is not doubtful. We think the testator meant 'or,' not 'and.' The court would not be justified in making the proposed substitution unless the whole context of the will plainly and beyond question requires that it be done in order to give effect to the will of the testator."

2.

Should the recital of the grantor's intention to provide for three of his children destroy the natural meaning of the provisions afterwards made?

The recital in the deed (Rec., p. 7) is as follows:

> "And whereas said party of the first part from considerations of blood and natural affection is desirous of making provision for his children by his first wife, to wit, Catharine Magdalena Sophia Walter, George N. Walter, and Mrs. Barbara King. Now, therefore, this indenture witnesseth," etc.

In other words, the grantor expresses his intention to provide for these three children, but how does he intend to provide for them? He gives to each of these children a naked life estate. It is evidently his purpose to take away from them any power whatever of disposing of the property, but simply reserves to them the rents and profits during their own life. He then goes on to provide that if any of them should die leaving children, then the ultimate fee should vest in these children. He then proceeds to provide that if any of these children, namely, Catherine, George, and Barbara, should die without leaving any child or children, or issue of any child or children, then and in that case the property should be sold, and after the death of the grantor the proceeds should be paid over in equal portions "to the surviving children of the said John Walter, Sr., party of the first part."

This deed, it will be observed, is most carefully and accurately drawn, and evidently from its every line was prepared by a competent and careful lawyer. It is to be noted that every time the grantor mentions the children of his first marriage they are referred to and mentioned by their names. It was his intention to provide a life estate for these children.

He then goes on to provide that if this intention should fail of effect by reason of the death of the children without themselves leaving descendants, then *after his own death* the property of the child thus dying without descendants shou'd go to the grantor's surviving children, not to the survivor of the three, but to his own surviving children at his own death.

Our contention is that he intended to provide for these three children, as he expressly states, but only so long as they might live, and then for their children after their death in fee, but if any one of these three died without children, then, the grantor postponing the time of distribution until after his own death, what was left should go to his own surviving children, all of them equally. There is, therefore, accordingly to our view of this case, no inconsistency between the recital in the beginning of the deed and the grant in the latter part of the deed. The two are perfectly consistent with each other, and even if they were not, under the familiar rules of construction, the vague language in a recital should not override the clear force and effect of the later disposition.

The trial court in its opinion (Rec., pp. 70, 71) says:

> "Bearing this recital in mind, we must conclude that the purpose of the deed was to provide for only three of his children by his first wife."

We submit that this is not an accurate statement of the case. It was his intention to provide a life estate for these three children, and to give the fee to their descendants, if they had any, but it was not his intention or his expressed wish that the property of any one of the three who died without issue should go to the other two. Why should the grantor provide, as he presumably did, for all of his children, possibly without favor, and then when one of them should die give the property of that

one to only two out of four other living children? It would be inequitable and unjust and against every act of the grantor performed at or about the time this deed was made.

The trial court in its opinion, further says (Rec., p. 71):

> "It seems to me that what the grantor intended to do was to have such portion of his real estate sold, after his death, and the proceeds paid over in equal portions to the two surviving children, who were co-beneficiaries of the deceased child under the said deed; and if the scrivener had used the word 'said' before the word 'surviving' there would probably have been no occasion for construing this document.
>
> "It is useless to speculate as to why or how that word was omitted; but taking into consideration the circumstances of the grantor, and of his two older children at that time, the conclusion seems reasonably certain that he only intended that the two surviving children of these three should, in the contingency named, be vested with the title that would otherwise have gone to the deceased child."

We submit that there is no warrant in this record or in the authorities for such a conclusion. There is no need for speculation as to why the grantor should have omitted words which if used would have changed the whole meaning of the instrument under consideration. We must take the deed as we find it, and construe it according to its own terms. The grantor says expressly that after his death the share in question should to to his own surviving children. It will not do to create an ambiguity which does not exist, and then to construe away that ambiguity by inserting words in the deed which the grantor himself has not used.

What is the true intent and meaning of the deed in question?

As before stated, if this deed can be reasonably construed by its own terms, and without reference to any considerations outside the deed, it would seem to be perfectly clear that it can be so construed without doing violence to its own terms and without importing into the deed words which are not there used.

Our contention is that the grantor intended to provide a living for each of these three children, and the absolute ownership to the children of all of them respectively if they had children, but that if any of them died without children then that share should be distributed among all his blood equally. It was a just and equitable and proper construction of the deed as we submit.

We submit that a proper construction of the deed in question is that the words "surviving children" mean those children of John Walter, Sr., who survived him, and who were living at his death, including Oscar, Adolph, and Hugo Walter, and Pauline Crow, and also including Mrs. Frosch and William Walter.

M. J. COLBERT,
Attorney for Certain Appellants.

Supreme Court, U. S.
FILED.
MAR 19 1913
JAMES H. McKENNEY,

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 192.

CATHARINE M. S. FROSCH, IDA S. MONDAY, ET AL., APPELLANTS,

vs.

WILLIAM WALTER.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Brief for Appellants, Ida S. Monday et al., Children and Heirs of Barbara King, Deceased.

HUGH T. TAGGART,
Attorney for Appellants Ida S. Monday et al., Children and Heirs of Barbara King.

THE LAW REPORTER PRINTING CO., WASHINGTON, D. C.

INDEX.

Page.

Statement of the Case:
- Determination of rights of parties involves construction of a provision in a deed in trust 1, 2
- The facts stated 3-8
- The deed in trust 5, 6
- The provision to be construed 7
- Claims of the parties 8

Assignment of Errors 9, 10

Argument:
- Intention of grantor governs; how ascertained 10, 11
- Construction should effectuate intention 11, 12
- Import of the deed, upon its face 12, 13
- Children of grantor by his third wife have no interest, nor the children of John Walter, deceased, son of grantor 13, 14
- Meaning of words "surviving children" considered 15-17, 18-20
- Death of George N. Walter did not leave the equitable fee simple to his lot, subject to the life estate of the grantor, without an owner. It belonged to those in whom the right to the proceeds of the sale had become vested 17, 18
- The application of the doctrine of equitable conversion considered and shown that it took place on the death of George N. Walter, without issue, and not upon the death of the grantor, who had a life interest in the property; that the interests of those entitled became vested on such death of the said George and that the parties entitled were his sisters, Catharine and Barbara, who survived him 18-23

Table of Authorities Cited.

Clarke *vs.* Franklin, 4 Kay & J., 257.
Craig *vs.* Leslie, 3 Wh., 578.
Cropley *vs.* Cooper, 19 Wall., 167.
2 Devlin on deeds, secs. 837, 839, 840, 843, 844.
Elliott *vs.* Jefferson, 133 N. C., 207.
Ewing *vs.* Burnett, 11 Pet., 54.
Greenleaf's Cruise's Digest. Note to sec. 26, ch. 12. Title 32. Deed.
Holcomb *vs.* Lake, 24 N. J. Law, 689.
Land Co. *vs.* Land Co., 169 U. S., 581.
Lash *vs.* Lash, 209 Ill., 605, citing 7 A. & E. E. of Law (2d Ed.), 468.
Manfg. Co. *vs.* R. R. Co., 64 Mich., 114.
Manfg. Co. *vs.* Wagon Co., 91 Ill., 230.
Martindale on Conv., sec. 98.
Nelson *vs.* Nelson, 36 Ind. App., 331.
Pomeroy's Eq. Jur., sec. 1159.
Thomson's Appeal, 161 Pa. St., 444.
Westbrook *vs.* Romeyn, Baldwin's Rep., 196.
Zimmer *vs.* Miller, 64 Md., 276.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 192.

CATHARINE M. S. FROSCH, IDA S. MONDAY, ET AL., APPELLANTS,

vs.

WILLIAM WALTER.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Brief for Appellants, Ida S. Monday et al., Children and Heirs of Barbara King, Deceased.

Statement of the Case.

Appellant, Catharine M. S. Frosch, filed her bill of complaint in the Supreme Court of the District of Columbia, holding an equity court, making defendants thereto all of the living children of her father, John Walter, Sr., deceased, and all of his grandchildren, who are the children of his deceased children.

Upon the predicament of facts stated in the bill the court was invoked to construe and to declare the true intent and meaning of one of the provisions of a deed

dated June 18, 1869, whereby her said father, John Walter, Sr., conveyed to his son John Walter, Jr., certain parcels of real estate in the city of Washington, and certain securities to be held upon certain trusts in the said deed set forth (Rec., pp. 1-6, 7-11).

Under the bill and answers questions arose as to the rights of the said several parties to participate in the distribution of a fund to be realized from the sale of one of the said parcels of real estate, which was directed to be made by the provision above referred to of the said deed in trust, in the event of the death of the grantor's son, George N. Walter, without issue, which event had happened.

Mr. Justice Barnard, holding the equity court, reached the conclusion for reasons stated in his opinion (Rec., pp. 68-72), that by the true intent and meaning of the said provision, the only parties entitled to participate in the distribution of the fund were the complainant Catharine M. S. Frosch, and the defendants, the children and heirs of her sister, Barbara King, deceased, and a decree was passed accordingly, that the proceeds of such sale should be divided between them equally, that is to say, one-half to the complainant and the other half to the children and heirs of her deceased sister, Barbara King (Rec., pp. 72-3).

From this decree, all parties, except the children and heirs of Barbara King, appealed to the Court of Appeals of the District of Columbia, which reversed the decree appealed from and by its mandate directed the equity court to enter a decree that William Walter was entitled to share equally with Catharine M. S. Frosch in the distribution of the proceeds of the sale of the portion of George N. Walter, and a decree was accordingly so entered by the equity court.

On appeal from this decree by all parties, except William Walter, it was affirmed by the Court of Appeals,

and from the decree of affirmance the parties appealed to this court.

There is no dispute over the facts. The situation of said John Walter, Sr., on June 18, 1869, the time of the execution by him of the deed above mentioned, and the circumstances attending its execution as disclosed by the pleadings and the testimony were as follows:

Five children by his first marriage were his only living issue, viz, three sons, John Walter, William Walter, and George N. Walter, and two daughters, Barbara, who had intermarried with Albert King, and to whom one child had then been born, and the complainant, Catharine M. S. Walter, now Frosch.

After the death of his first wife and on April 30, 1863, he had intermarried with Catharine Huber, who was a widow with three children by her first husband. Several years had elapsed and no issue had been born of this marriage. It is evident that hope of such issue had been abandoned. She joined with her husband in the execution of the deed which made no provision for such issue while it did specifically and in terms provide for the payment of $2,000 to the children of her first husband.

Appellants contend that it can not be imputed to the husband that on June 18, 1869, when the deed was executed, he contemplated the death of his then wife, the contraction of still another marriage, and the birth of issue of it; that the deed and the circumstances negative the suggestion.

On said June 18, 1869, he was the owner of certain parcels of real estate in the city of Washington, D. C., and of certain securities, and, as clearly indicated by the record, claimed ownership of certain other real estate, viz, parts of lots 5 and 6 in square 323, which had been theretofore conveyed by Joseph Nathan to William Walter, son of said John Walter, Sr., and which then stood in said William Walter's name, and also the

ownership of certain other real estate, viz, lot 8 and part of lot 9 in square 377, which had been theretofore conveyed by John W. Nairn to his said son, William Walter, and his said son, John Walter, jointly, and which then stood jointly in their names (Rec., pp. 42, 44).

Owning and claiming to own as stated the said several properties, he determined as shown by his acts and declarations upon making "provision" out of it for each of his said five children, and he did this by separate and distinct instruments in the cases of his said son William and his said son John, and in the following manner.

He procured the execution by his said son William of a deed of conveyance in fee to himself, the said John Walter, Sr., of said parts of lots 5 and 6 in square 323; this deed is dated June 18, 1869, and is for the nominal consideration of one dollar (Rec., p. 58).

He also procured the execution of a deed of conveyance in fee by his said son John Walter (Jr.) to his said son William Walter of the undivided half interest in said lot 8 and part of lot 9 in square 377, vested in him, said John, by the deed from Nairn to the said John Walter, Jr., and the said William Walter. This deed is dated June 18, 1869, and is for the nominal consideration of one dollar, thus vesting, of record, the whole title to said lot 8 and part of lot 9, in square 377, in the said William Walter (Rec., p. 49), as a provision for him.

He conveyed to his son, John Walter, Jr., in fee, by deed dated June 18, 1869 (in the execution of which his wife Catharine joined), lot 10, in square 347, on F Street, as a provision for him (Rec., p. 46). Each of the two last-mentioned deeds is in fee simple absolute.

After thus providing for his sons, William and John, the said John Walter, Sr., made "provision" for his three remaining children, Barbara King, George N. Walter, and the complainant, Catharine M. S. Walter (now Frosch), by a single deed of conveyance in trust to his said son

John Walter, Jr. This deed is also dated June 18, 1869, and the consideration expressed is that of natural love and affection and his desire to make "provision" for them. In it he refers to the above-mentioned deeds to his sons, William Walter and John Walter, Jr., as "a provision" made for them respectively (Rec., p. 7).

The Deed in Trust.

The last-mentioned deed begins with the statement that the grantor is the owner of "certain real estate" and of certain "credits" and with a declaration in unmistakable terms of his intention to make provision by it for his three remaining children by his first wife, viz, Catharine and George N. Walter and Mrs. Barbara King.

The precise language used by him in the introductory part of the deed is as follows:

> "This indenture made this eighteenth day of June, one thousand eight hundred and sixty-nine between John Walter, Senior, and Catharine Walter, his wife, of the city of Washington, and District of Columbia, of the first part and John Walter, Junior, of the same place, of the second part.
>
> "Whereas, the said John Walter, Senior, party of the first part is the owner of certain real estate and of certain credits, some of which are secured by deed of trust on real estate in said city. And whereas, the said party of the first part from considerations of blood and natural affection is desirous of making provision *for his children by his first wife, to wit, Catharine Magdalena Sophia Walter, George N. Walter, and Mrs. Barbara King.*"

This declaration of the consideration moving him and of his intention in the execution of the deed is followed by a conveyance of the trust estate and a declaration of the trusts upon which it is to be held by the trustee.

Briefly stated they are in their material features to the effect:

That the trustee should pay over "the rents, issues and profits" of the trust estate to the grantor "for and during the term of his natural life." That he should pay out of the rents of the estate three-fourths of the cost of certain improvements, then in progress to the premises which had been conveyed by the grantor to his son John Walter, Jr., "as a provision" for him in case such improvements were not completed in the lifetime of said John Walter, Sr. The residue of such cost was to be paid out of property, not included in the trust, viz, the premises which had been conveyed to grantor's son, William Walter, as "a provision" for him.

That he should pay out of the rents of the trust estate, $2,000, to Catharine Walter, the present wife of the grantor, in case she survived him, for the use of her children by her first husband, and if she did not survive him, then that the trustee should pay said sum to her said children.

Having subjected the trust estate to the above burthens the grantor then proceeds to declare the disposition to be made of it by way of "provision" for his said children, Catharine and George N. Walter, and Mrs. Barbara King, and their respective children.

This he does by further trusts to the effect:

That upon the death of the grantor, the trustee should hold a certain described portion of the trust estate, in trust to pay over to his daughter, Catharine M. S. Walter, for her life, "the rents, issues and profits" of the same, and upon her death hold the same for her children in fee.

That he should hold upon like trusts, *mutatis mutandis*, certain other portions of the trust estate for the benefit of his daughter Barbara and her children, and for the benefit of his son George and his children.

Then follows the provision of which a construction is sought:

> "That in the event of the death of any one of the above-mentioned children of the said John Walter, Senior, to wit, Catharine, George, and Barbara, without leaving any child or children or any issue of any child or children, then and in that case that the property held in trust by said trustee, party of the second part, for the benefit of the party then dying without issue, shall be sold by said party of the second part, after the death of John Walter, Sr., and the proceeds paid over in equal portions to *the surviving children* of the said John Walter, Sr., party of the first part."

George N. Walter died on May 14, 1892, in the lifetime of his father, without issue; his father died April 12, 1907, and the portion of the trust estate which he directed the trustee to hold for the benefit of said George and his children has thereby become subject to a sale under the above provision of the trust deed.

Catharine Walter, the second wife of John Walter, Sr., died November 9, 1872, upwards of three years after the execution of the deed in trust of June 18, 1869, and later he married a third time and four children were born of the marriage, viz, the appellants Oscar, Adolph, and Hugo Walter, and Pauline Crow. The appellant, Mrs. Frosch, and her sister, Barbara King, children of the first marriage, survived their brother, George N. Walter.

Mrs. King died on August 23, 1904, in the lifetime of her father, leaving eight children, the appellants.

The appellee, William Walter, is a child of the first marriage. John Walter, a child of the first marriage, died November 17, 1906, in the lifetime of his father, leaving two children, the appellants, Henry and Frederick Walter.

The appellant, Mrs. Frosch, claims in her bill of complaint that her brothers, William Walter and John Walter, Jr., had been otherwise provided for, as stated in the deed of trust, and that it was the intention of her father, John Walter, Sr., "to provide exclusively in said deed in trust" for her, for her sister, Barbara King, and for her brother, George N. Walter; and that in respect of the provision made for George N. Walter, and the sale of the property, directed to be made, in case of his death without children or issue of children, and the payment of the proceeds equally "to the surviving children" of the grantor, the said provision refers "exclusively" to the said three children by his first wife, and that the said Catharine, having survived the grantor, and "being the survivor of said three children, is the sole owner in equity" of the property or its proceeds.

The other appellants claim to be included in the expression, "the surviving children" of the grantor, and to be entitled to share in such proceeds of sale; one of them, to wit, William Walter, as being a child of the grantor's first marriage, and four of them, to wit, Oscar, Adolph, and Hugo Walter, and Pauline Crow, as being children of the grantor by his third marriage, and two of them, to wit, Henry and Frederick Walter, as being the children of John Walter, Jr., a deceased child of the grantor by his first marriage.

The appellees, the children of Barbara King, contend that the claims of the parties, other than Mrs. Frosch, are without foundation, and that as to her claim, she is not entitled to the whole of such proceeds of sale, but to one-half thereof, and that the appellants, the children and heirs of Barbara King, are entitled to the other half of the same.

Assignment of Errors.

1. The Court of Appeals erred in holding and deciding that upon the death of John Walter, Sr., the grantor in the deed in trust, Catharine M. S. Frosch and William Walter, as the two children of the said grantor, who outlived him, became vested under said deed with title in equal shares to the entire proceeds of the sale which the said deed directs shall be made of the parcel of ground described in the third paragraph of the bill of complaint in the event of the death of said grantor's son, George N. Walter, without issue, and which event took place in the lifetime of said grantor.

2. The Court of Appeals erred in not holding and deciding the true construction of the said deed in trust to be, that upon the death of the grantor's son, George N. Walter, without issue, title to the said parcel of ground and the right to the entire proceeds of the sale thereof, which the said deed directs shall be made in the event of the death of the said George N. Walter, without issue, became vested in Barbara King and Catharine M. S. Frosch, the surviving sisters of the said George N. Walter in equal shares subject to the life interest therein of their father the said grantor.

3. The Court of Appeals erred in decreeing the affirmance with costs of the final decree of the Supreme Court of the District of Columbia, passed in said cause on February 15, 1910, by which final decree it is declared that the defendant, William Walter, is entitled to share with complainant Catharine M. S. Frosch, in the division of the proceeds of such sale of the said parcel of ground, in the proportion of one-half of such proceeds, to the said William Walter, and one-half thereof to the said Catherine M. S. Frosch.

4. The Court of Appeals erred in not reversing the said final decree of the said Supreme Court of the District of

Columbia, and remanding the said cause to the said Supreme Court with instructions to pass a decree declaring that upon the death of the said George N. Walter, without issue, title to the said parcel of ground and the right to the entire proceeds of such sale thereof, become vested in equal shares in Barbara King and in Catharine M. S. Frosch, the sisters of the said George N. Walter, who survived him, and that the proceeds of such sale when made should be distributed accordingly.

ARGUMENT.

The question involved being that of the proper construction of a deed, certain well-established principles and rules of general application will be first referred to and then the pertinent facts will be considered as they are disclosed by the record and to which these principles and rules must be applied.

These rules and principles are expressed by the authorities in varying terms, but are all to the effect (1) that the intention of the grantor governs; (2) that in ascertaining it recourse may be had to all parts of the deed and to the situation of and the circumstances surrounding the grantor at the time of its execution and (3) that when such intention is ascertained, the language should be so construed as to best effectuate it.

Intention Governs; How Ascertained.

Intention governs as manifested in the grant by its terms or by reasonable and necessary implication from the situation of the parties.

Ewing *vs.* Burnett, 11 Pet., 54.
2 Devlin on Deeds, secs. 839, 840.

In construing instruments of title references must be had to all parts of them.

Land Co. *vs.* Land Co., 139 U. S., 581.
2 Devlin on Deeds, sec. 844.

In expounding a grant it must be done according to the intent, at the time, of the grantor and in the light of the surrounding circumstances.

Manfg. Co. *vs.* R. R. Co., 64 Mich., 114.
Zimmer *vs.* Miller, 64 Md., 276.

Professor Greenleaf says in his abridgment of Cruise's Digest of the Law of Real Property, in a note to sec. 26, of Ch. 12, Title 32, Deed:

> "The modern rule is to give effect to the whole and every part of the instrument, whether it be a will or a deed or other contract; to ascertain the general intention, and permit it, if agreeably to law, whether expressed first or last, to overrule the particular; and to transpose the words, wherever it is necessary, in order to carry the general intention, plainly manifested, into effect."

Construction Should Effectuate Intention.

When the intention has been ascertained, then if the words can be fairly construed to express that intention they will be so construed.

Manfg. Co. *vs.* Wagon Co., 91 Ill., 230.

In construing an instrument that construction will always be adopted which will accomplish the object for which the instrument was executed.

2 Devlin on Deeds, sec. 843.

> "If the deed contains a clause decisively showing the intention of the parties, ambiguities and

inconsistencies in other clauses will not defeat such intention."

2 Devlin on Deeds, sec. 837.

No rule can be invoked for the construction of a deed, which tends to defeat the intention of the grantor.

Elliott *vs.* Jefferson, 133 N. C., 207.

The statements in the preliminary recital of the deed of trust that the causes moving him to its execution are the consideration of "blood and natural affection" for the three children by his first wife, whom he names, and his desire to make provision for them, clearly indicates that the dominant idea then in his mind, as to such provision, was that it should be solely for the children named; that for the purposes of such provision they only were to be included in the expression "my children by my first wife;" and that when, later, he uses the expression "the surviving children of the said John Walter, Senior," in the clause of the deed, of which a construction is sought he intended that its meaning should be confined to the said three children. Hence, upon the death of said George N. Walter the provision intended for him vested in his two surviving sisters, the said Catherine and Barbara, and upon the death of said Barbara, her interest passed to her children.

Upon the face of the provision itself, that in the event of the death of any one "of the above-mentioned children of the said John Walter, Senior, to wit, Catherine, George and Barbara without leaving any child or children or any issue of any child or children" the property held in trust for the one so dying should be sold after the death of John Walter, Senior, and the proceeds paid over, in equal portions "to the surviving children of the said John Walter, Senior," there is no ambiguity.

From the context and the grammatical standpoint alone, the appellant, Mrs. Frosch, and ~~the appellants, children of~~ Barbara King, who survived their brother, George N. Walter, should be considered as "the surviving children of the said John Walter." That the words last quoted, obviously, are predicated upon and have relation to the death antecedently mentioned in the same clause of any one of the said three children, and are not predicated and do not relate to the death of said John Walter, Sr., which is mentioned merely as a specification of the time after which such sale should take place.

"Generally all relative words are read as referring to the nearest antecedent."

Martindale on Conv., sec. 98.

Even if the expression is ambiguous and susceptible of two meanings, one in accord and the other not in accord with the grantor's general intention, the one in accord with such intention as ascertained from the entire deed and from the situation of and the circumstances surrounding the grantor at the time of its execution should be adopted.

The children of the grantor by his third marriage are not within the true meaning of the words, "the surviving children of the said John Walter, Senior," the grantor, as used by him in the clause of the deed in trust above quoted. The deed in trust took effect and became absolute by delivery. It was based upon conditions which existed at the time of its execution and not upon unmentioned and unconsidered exigencies of the future. It contains no suggestion of the contingency of a third marriage of the grantor and is utterly devoid of provision for it. Hence they have no claim upon the fund.

Neither the children of John Walter, Jr., deceased, who was a child of grantor's first marriage, nor William

Walter, also child of the same marriage, are entitled to share in the fund. John Walter, Sr., declares in the deed of trust that he has already made provision for his said sons William and John, and that his purpose by it is to make provision for his children, Catharine, Barbara, and George. Apart from the clause, the meaning of which is in controversy, there is absolutely nothing in the deed in trust to indicate an intention on his part that his sons, John and William, should take, in any event, any interest in the property conveyed in trust for his said three other children. There is much outside of it to indicate that he had no such intention, and could not in reason have had it.

By the deeds to said William and John, respectively, title to the property conveyed and its entire beneficial interest is vested in them. A life estate is not reserved to the grantor, nor is it provided that in case of the death of either of them, without issue, any interest whatever should accrue to their surviving brothers and sisters. No burthens were imposed upon the properties conveyed to them such as were imposed upon the estate conveyed to John Walter, Jr., in trust for the other three.

The estate of the grantor which passed in trust by the deed consisted of the parcels of real estate and the two notes described in it. He states in the deed that "in order to equalize the division of my property between my said children," referring to Catharine, Barbara, and George, one of the notes shall be added to parts of the real estate and held for the benefit of his daughter Catharine, and that the other shall be added to parts of the real estate and held for the benefit of his daughter Barbara.

What property did he refer to? As the real estate which had been conveyed to his sons John and William as a "provision" for them was no longer his "property" and was beyond his control, he could only have had in

mind the property described in the deed in trust, which was to be disposed of, according to its declared purpose in providing for the said three children of his first wife. In view of the inequality of the benefits to be received by John and William under the "provision" made by the deeds to them and those to be received by Catharine, Barbara, and George under the "provision" made for them by the deed in trust, it is unreasonable to suppose that he intended to emphasize the inequality by permitting the said John and William to share in the proceeds of the lot of any one of the three who might die without leaving children or issue of children. Under the deeds to John and William the three other children could take no interest in the properties conveyed to them in the case of their deaths without issue. Mr. Justice Barnard in considering the meaning of the word "surviving" as used in the deed in trust observes:

> "What did the grantor mean by the word 'surviving?' To whose death did he refer and when somebody was to survive, and what did he mean by the word 'children?'
>
> "The word 'surviving' would seem to relate to the time when one of the said three children should die without leaving issue, and if that is correct the share that would be going to such deceased child would, from that moment, be vested in the trustee for some other beneficiary, and the beneficiaries in that event were to be the grantor's surviving children. Could he have meant any surviving children other than the survivors of those three for whose benefit the deed in trust was made?
>
> "It will be remembered that neither of these three children was, by said deed in trust, entitled to anything during the lifetime of John Walter, Sr., but the title subject to his life estate and subject to the contingency of dying without issue was vested in them by the said deed when it was delivered."

bearing upon the question when interests become vested and in whom, in cases involving the construction of such phrases as "surviving children," "my surviving children," and the like, Holcomb *vs.* Lake, 24 N. J. Law, 689, may be referred to. In that case the court was called upon to construe expressions similar to those under consideration in the present case.

The testator devised to his son John certain real estate in fee tail, and bequeathed to him certain personal property, said son to have possession "when he arrives at the mature age of 21 years." The will contained the following provision:

> "And in case my said son, John Holcomb, die before he comes and arrives at the said age of 21 years, *or* without issue, heirs of body lawfully begotten, that *then* my will is that the said two plantations and personal property, being the legacy of my said son, *be equally divided amongst my surviving children.*"

The testator left at his decease three children—his son John, then about 16 years of age, and two daughters, Sarah and Mary, both of whom were married and had issue.

It was claimed by one of the parties to the suit that the words "then" and "surviving," in the clause of limitation, referred to the time of the testator's decease, and not to that of John's death. But the court held otherwise.

> "Because it is not their obvious natural meaning—not the meaning they convey to the ordinary reader. The testator is speaking of an event that may occur at a future period, to wit, *John's death* without lawful issue, and he goes on to say if that event should happen, *then*, his will is that a certain consequence shall follow—shall follow *then*, upon the happening *of that event*, and that consequence is that the lands given to John shall

> be divided among his *surviving children*. Divided when? Certainly after John's death, among his *surviving* children. Surviving when? Certainly at the time of which he is speaking. Surviving who? Certainly *the person* whose death casts the estate to be divided upon them."

Among other cases cited in the opinion of the court is that of Westbrook *vs.* Romeyn, Baldwin's Rep., 196. In that case the grantor conveyed lands to his son Moses and to the heirs of his body lawfully begotten, and in default of such issue, *then* to the surviving sons and daughters of A in certain shares. The court said:

> "The word *then* denotes the *time* when the interest vests in them to be at Moses' death, as well as the persons to take, that is, those who shall be the survivors of Moses."

The language of the deed in the case at bar is:

> "And it is hereby further witnesseth that *in the event* of the death of any of *the above-mentioned children* of the said John Walter, Senior, to wit, Catharine, George and Barbara, without leaving any child or children, or any issue of any child or children, *then and in that case*, that the property held in trust by said trustee, party of the second part, for the benefit of the party then dying without issue shall be sold, by the said party of the second part, after the death of the said John Walter, Senior, and the proceeds paid over in equal portions to the surviving children of the said John Walter, Senior."

If George N. Walter had died in the lifetime of his father, leaving children, it is plain that under the deed they would, upon the death of their father, have become vested with an equitable fee simple estate in the lot, subject to the life interest therein of the grantor. The death of said George, without issue, did not leave the

equitable estate in fee, subject to the grantor's life estate, without an owner. That would be contrary to the rule of the law which favors the vesting of estates at the earliest moment. Such equitable estate, upon the death of said George, without issue, became vested in those who were declared by the deed to be entitled in that event to the proceeds of the sale, although the enjoyment of the property or its proceeds was postponed until the termination of the grantor's life estate.

The question is, therefore, in whom did the estate vest and for whom was it held by the trustee upon the death of the said George N. Walter without issue? The deed says that the proceeds of the sale of the property shall be "*paid over*" in equal portions "to the surviving children of the said John Walter, Sr.," the grantor. The gift is absolute. Being entitled to the proceeds of the sale of the property, the property itself was vested in them until sold and the proceeds divided between them.

At any time before the sale they might have elected to take the property instead of the proceeds.

Craig *vs.* Leslie, 3 Wh. (16 U. S.), 578.
Cropley *vs.* Cooper, 19 Wall. (86 U. S.), 167.

What children did the grantor have in mind when he used, in the above connection, the phrase, "the surviving children of the said John Walter, Sr.?" The deed was *inter vivos* and took effect from delivery, and it is to be construed in the light of the purposes for which it was executed and of the circumstances as they existed at the time of its execution. These purposes and circumstances, as has been shown, absolutely negative the idea that the children of a marriage not then contemplated by the grantor are within the phrase, and such was the opinion of both of the courts below.

The same purposes and circumstances as completely

negative the idea that the grantor in the use of the phrase intended that any of his children by his first wife other than Mrs. Frosch, Mrs. King, and George N. Walter should be included in it. The grantor states in the deed that it is executed for the purpose of making provision for his three last-mentioned children and apart from the phrase itself there is nothing in the deed to indicate that his sons William and John should derive benefit from it in any event. There is much otherwise to indicate that they were to be excluded from such benefit, as has been shown. The grantor must have realized that the provision made for his sons, John and William Walter, respectively, was grossly disproportionate in the way of actual benefits conferred, to the provision made in the way of benefits for his children, Catharine, Barbara, and George. His sons John and William entered at once upon the possession and enjoyment of estates in fee simple in which the three remaining children had no interest, either present or prospective. He knew that his three remaining children could not enter into the possession and enjoyment of the estates given them until the uncertain time in the future, when his own death should happen and that then an estate only for life was limited to each of them. It appears that his daughter, Barbara King, lived for thirty-five years after the execution of the deed in trust, during which time she was precluded by its terms from the enjoyment of any benefit under it, and that Mrs. Frosch was in the same predicament for thirty-eight years.

Surely the grantor could not but realize that permitting his sons John and William to participate in the proceeds of a sale of one of the parcels of real estate in the case of the death of either Catharine, Barbara, or George, without issue, would emphasize the inequality of the original

distribution of benefits from his estate among his children. It is unreasonable to assume, the premises considered, that in the use of the phrase he nevertheless intended such a result.

It follows that upon the death of George N. Walter, without issue, title to the parcel of ground held in trust for him and the right to the proceeds of a sale thereof became vested, under the deed in trust, in equal shares in his sisters Catharine and Barbara, who survived him, subject to the life interest of the grantor in the property. Said interest of the said Barbara became transmissible at her death as a part of her estate.

The Doctrine of Equitable Conversion.

In Craig *vs.* Leslie, 3 Wh., 577, it is said:

> "The settled doctrine of courts of equity corresponds with this obvious construction of wills as well as other instruments, whereby land is directed to be converted into money or money into land for the benefit of those for whom the conversion is intended to be made."

The direction to the trustee to sell the lot of ground upon the death of George N. Walter, without issue, is imperative and operated as an equitable conversion of the lot into personalty upon the happening of that event.

In Pomeroy's Eq. Jur., sec. 1159, it is said:

> "The true test in all such cases is a simple one. Has the will or deed creating the trust absolutely directed, or has the contract stipulated that the real estate shall be turned into personal estate or the personal estate be turned into land?"

The gift of the proceeds created an immediate vested interest in the parties entitled; that the actual conversion was not to take place until after the expiration of the life interest of the grantor is immaterial. The enjoyment of every estate created by the deed, other than the

life interest of the grantor, is postponed until after his death.

The fact that the sale is to be made at a future time, either after the death of the life tenant or after the expiration of a certain number of years, does not prevent a conversion.

> Lash *vs.* Lash, 209 Ill., 605, citing 7 Am. & Eng. Encyc. of Law (2d Ed.), 468.

In Nelson *vs.* Nelson, 36 Ind. App., 331. the testator directed a sale of real estate upon the death of his widow to whom a life estate was given and that the proceeds should be divided equally among his children. It was held that an equitable conversion took place at the death of the testator which required the real estate to be considered as money; that such conversion was not postponed because of the fact that the land was not to be sold until after the death of the life tenant and in support of the ruling numerous authorities are cited.

In the opinion it is said:

> "It is the direction of the testator that the conversion shall be made which supports the fiction and not the actual change of the property into money."

It was contended for the appellant that if the bequest to the children was money or personalty, it was a gift to them as a class and their rights became vested at the time of the distribution, upon the theory that the will simply gave a direction to divide the property at a specified time, and that not until that time does the property vest, but the court refused to affirm the contention in the light of the authorities cited in the opinion.

In the opinion the following paragraph from Thomson's Appeal, 161 Pa. St., 444, is quoted with approval:

> "It is clear that the only purpose of postponing

> the sale was for the benefit of his wife, and not on account of anything that affected the children, so as to cause him to attach any condition to the legacies. . . . To the same effect is the holding of the court in the cases: Drumfield *vs.* Drook (101 Ind., 172); Ballinger *vs.* Drook (101 Ind., 172); Knight *vs.* Pottgieser (176 Ill., 368)."

In like manner the postponement of the sale by the grantor in the case at bar was for his own convenience, and not because of anything affecting the children to whom the gift was made.

In Clarke *vs.* Franklin, 4 Kay & J., 257, Clarke the settlor conveyed to trustees to the use of himself for life, certain real estate in Clarendon Square, and after his death to the use of the trustees to sell and dispose of the property and out of the proceeds to pay the costs and expenses of the sale; to pay six sums of fifty pounds each and one sum of twenty pounds to persons named and upon trust to pay the residue to the minister, churchwardens, and overseer of the parish to be applied by them to charitable purposes. The latter trusts were declared invalid.

The bill was filed by the widow to have the rights of the parties declared and to have the trusts, in so far as they were valid administered under the direction of the court.

Mr. Evans for the heir contended that he was entitled to the Clarendon Square property, subject only to the charges in favor of the persons to whom the sums above mentioned were payable; that admitting a deed speaks from its delivery, the deed in this case expressly postpones conversion until after the expiration of the grantor's life estate, etc.

> "The Vice-Chancellor. So far as regards authority, Hewitt *vs.* Wright seems to be the very case before me.

> "Mr. Evans. That case is distinguishable from the present. Here by no possibility could there be a conversion in the lifetime of the grantor.
>
> "The Vice-Chancellor. Is not the principle this, that the fact of conversion is one thing, the direction to convert another. The direction operates for the purposes of this question immediately on delivery of the deed, although the property is not to be converted until after the grantor's death."

The Vice-Chancellor considered in his opinion, Griffith *vs.* Ricketts, 7 Hare, 299, and Hewitt *vs.* Wright, 1 Bro. C. C., 86, and in regard to the latter says:

> "That, therefore, is an express decision that notwithstanding the trust for conversion of real estate into personal is not to arise until after the death of the settlor the property is impressed with the character of personalty immediately upon the execution of the deed and so much as is undisposed of results as personalty."

In the light of the principles established by the foregoing authorities there seems to be no doubt that the real estate held in trust for George N. Walter, was converted into personalty from the date of his death without issue and that the conversion did not take place at the death of the grantor in the deed in trust and that the interests of the parties in title became vested accordingly.

For the reasons hereinbefore set forth the parties so entitled were Catharine M. S. Frosch and Barbara King, who survived their brother George N. Walter, and the Court of Appeals should have so held and decreed.

HUGH T. TAGGART,

Attorney for Appellants Ida S. Monday et al., Children and Heirs of Barbara King.

MAY 2 8 1913
JAMES H. McKENNEY,
Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1912.

No. 192.

CATHERINE M. S. FROSCH ET AL., APPELLANTS,

vs.

WILLIAM WALTER, APPELLEE.

Brief for Appellee, William Walter.

ANDREW LIPSCOMB,
JAMES B. ARCHER,
JNO. LEWIS SMITH,
Attorneys for William Walter.

THE LAW REPORTER PRINTING COMPANY, WASHINGTON, D. C.

INDEX.

	Page
Statement of the Case	1
Children of John Walter, Jr., and Barbara King Excluded	4
Children of Grantor by Third Wife Excluded	6
William Walter Entitled to Share in Distribution	7

Authorities Cited.

Adams *vs.* Law, 17 How. (U. S.), 417-423	4
Blake *vs.* Hawkins, 98 U. S., 315	9
Boston, etc., Co. *vs.* Blanchard, 196 Mass., 35	6
De Vaughn *vs.* Hutchins, 165 U. S., 564	5
McCartney *vs.* Osburn, 118 Ill., 403	6
McClain *vs.* Capper, 98 Iowa, 145	6
Nichols *vs.* Gutherie, 109 Tenn., 535	6
Poor *vs.* Considine, 73 U. S., 869	5
Reilly *vs.* Bristow, 105 Md., 326	6
Satterfield *vs.* Mayes, 11 Hum. (Tenn.), 58	6
Storrs *vs.* Burgess, 101 Me., 26	6
Thompson *vs.* Ludington, 104 Mass., 193	6
Webber *vs.* Jones, 94 Me., 429	6
Wright *vs.* Page, 10 Wheat. (U. S.), 204	9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1912.

No. 192.

CATHERINE M. S. FROSCH ET AL., APPELLANTS,

vs.

WILLIAM WALTER, APPELLEE.

Brief for William Walter, Appellee.

Statement of the Case.

On the 18th day of June, 1869, John Walter, Sr., was married and living with his wife, who was his second; he had been six years married to her without having had any children by her. By his first wife he had several children, of whom, at the date mentioned, the following were living, namely:

Children of John Walter, Sr., first wife.	John Walter, Jr., George N. Walter, Catherine M. S. Frosch, Barbara King.

In 1872 John Walter, Senior's second wife died and he thereafter married his third wife by whom he had four children, as follows:

Children of John Walter, Sr., by his third wife.	Oscar Walter, Adolph Walter, Hugo Walter, Pauline Crow.

This cause originated by a bill to obtain a construction of a provision contained in a deed in trust executed and delivered by John Walter, Sr., on the 18th day of June, 1869, in the lifetime of his second wife. The particular provision to be construed is as follows (after conveyance of several parcels of real estate to John Walter, Jr., trustee):

> "And in trust, that the said party of the second part shall *from and after the decease of the said John Walter, Senior*, hold the following property, to wit, the fourth parcel of land hereinbefore described. . . . In trust to pay over to George N. Walter, the youngest son of the said John Walter, Senior, the rents, issues and profits of the said property for and during the term of his natural life and from and after his decease to hold the said property for the use of all and every the children of said George N. Walter, in fee and their heirs forever. And it is hereby further witnessed that in the event of the death of any one of the above mentioned children of the said John Walter, Senior, to wit: Catherine, George, and Barbara, without leaving any child or children or any issue of any child or children, then and in that case that the property held in trust by said trustee, party of the second part for the benefit of the party then dying without issue shall be sold by said party of the second part, after the death of John Walter, Senior, and the proceeds paid over in equal portions to the surviving children of the said John Walter, Senior, party of the first part."

George N. Walter, one of the beneficiaries of said provision, died without issue in the lifetime of his father and at the time of the death of George, his full brothers, William and John, Jr., and full sisters, Catherine M. S. Frosch and Barbara King, were living as were his half brothers and sister, Oscar, Adolph, Hugo and Pauline Crow. John Walter, Sr., died in 1907. At the time of the

death of John Walter, Sr., two of his children by his first wife were living, namely, William Walter and Catherine M. S. Frosch. John Walter, Jr., having predeceased his father, left issue two children:

Children of John Walter, Jr. { Frederick L. Walter, Henry C. Walter.

Barbara King having predeceased her father left issue eight children:

Children of Barbara King. { Ida S. Monday, Emma A. Schwab, William A. King, J. Harry King, Margaret Collins, Caroline M. King, Eva A. King, Mabel D. King.

Catherine M. S. Frosch claims the entire interest created for George by the provision of the deed in question. Her claim is based upon her survivorship of George and John, Jr., at the time of her father's decease.

William Walter claims one-half of said interest as being one of the two surviving children of John Walter, Sr., by his first wife, the only children in being or in contemplation at the time of the execution of the deed in question.

Henry C. Walter and Frederick L. Walter claim a share in said interest as being the children of John Walter, Jr., who survived George N. Walter, though predeceasing their grandfather.

The eight children of Barbara King claim a share in said interest because their mother survived George N. Walter, though she also predeceased her father.

The children of John Walter, Sr., by his third wife claim a share in said interest as being "surviving children" of John Walter, Sr., having survived both their father

and George N. Walter, although they were not in being or in contemplation at the time of the execution of the deed in trust.

ARGUMENT.

Appellee, William Walter, maintains that the decree of the Court of Appeals, holding that himself and Catherine M. S. Frosch are the only children of John Walter, Sr., to share in the distribution of the portion of George N. Walter, is correct and should be affirmed. He conceives that the real controversy is between himself and his sister, Catherine M. S. Frosch, because they are the only surviving children of John Walter, Sr., who were in being or in contemplation at the time of the execution of the deed in question.

FIRST.

Children of John Walter, Jr., and Barbara King Excluded.

John Walter, Jr., died November 16, 1906, over fifteen years after the death of George. Barbara King died August 23, 1904, over eleven years after George. Both died in the lifetime of their father, the grantor.

(*a*) The children of John, Jr., and Barbara could not take under the designation, "surviving children of John Walter, Senior," because in the absence of special circumstances, not existing in this case, *grandchildren* are not included in the designation "children."

See 17 How. (U. S.), 417-423, Adams *vs.* Law.

(*b*) The children of John, Jr., and Barbara do not take by inheritance from George, because, assuming, but not conceding, that the provision for George was a grant of real estate in contradistinction to personalty, George, in such case, did not take a fee, but took only an equitable life estate. He could take more than an equitable life

estate in such case only if the rule in Shelly's Case applied. But it has been settled by this court that in the District of Columbia the addition of the words "their heirs" after a limitation in remainder to children takes the case out of the rule in Shelly's Case even in the instance of a will.

See 165 U. S. (41:827), pp. 564, 578, De Vaughn *vs.* Hutchins.

(*c*) The limitation over to the "surviving children of John Walter, Senior," in case of the death of George N. Walter, Barbara King, or Catherine M. S. Frosch, is not a present gift or grant of real estate, but is in express terms a direction "*after the death of John Walter, Senior*," to sell and distribute *proceeds* "to the surviving children of John Walter, Senior." The limitation is, therefore, contingent in two respects, namely, the distributees are to be "*surviving children*" of John Walter, Sr., and the distribution to "surviving children" is contingent upon death of George, Barbara, or Catherine, without issue, in the lifetime of the grantor. Now, one of these contingencies, at least, was such as to prevent the ultimate interest carried by the grant from vesting at the time of its execution and delivery, namely, the death of George, Barbara, or Catherine, without issue, in the lifetime of the grantor, because it was an event which was not bound to happen by the ordinary efflux of time.

See 73 U. S. (18:875), 869, Poor *vs.* Considine.

All three might have had issue and all might have survived the grantor.

Yet, if it be said that by the death of George, without issue, in the lifetime of his father, the grantor, this contingency was eliminated and the interest of George thereby vested in some, at least, of the children of John Walter, Sr., including in any event Barbara and

Catherine, the character of the limitation over was such that it was subject to be devested by the death of any of such children in the lifetime of the grantor, for, as we have above seen, the direction to distribute to children does not include grandchildren, and where distribution to a class such as children is ordered, the individuals constituting the class are not ascertained until the time of distribution, in this case, "after the death of John Walter, Senior."

11 Hum. (Tenn.), 58, Satterfield *vs.* Mayes.
109 Tenn., 535, Nichols *vs.* Gutherie.
98 Iowa, 145, McClain *vs.* Capper.
104 Mass., 193, Thompson *vs.* Ludington.
118 Ill., 403, McCartney *vs.* Osburn.
105 Md., 326, Reilly *vs.* Bristow.
196 Mass., 35 Boston, etc., Co. *vs.* Blanchard.
101 Me., 26, Storrs *vs.* Burgess.
94 Me., 429, Webber *vs.* Jones.

SECOND.

Children of Grantor, by Third Wife, Excluded.

It was found by the courts below that the children of the grantor, by his third wife, take nothing by the deed in question, and the reasoning drawn from the known situation of the grantor at the time of the execution of this conveyance *in praesenti*, the method chosen, and his subsequent acts amply support the finding.

He was married to his second wife in April, 1863, and executed the deed in question in June, 1869, more than six years later. During these six years he had had no children by her, and she died in 1872 without having had children of the marriage.

He either did not, at the time of the conveyance, contemplate having children by her or deliberately ignored the possibility of any such in the provisions of his deed.

In each provision for the three children, George, Barbara, and Catherine, he manifested that he intended and aptly provided that their offspring to the last degree take the portions of their respective parents to the exclusion of existing or future children. That while yet living with his second wife, at the date of the deed, he contemplated a third marriage and issue thereby is too remote a speculation, at least, to affect the interpretation of his language in an instrument taking effect upon delivery or to extend its terms so as to include any such issue..

The conclusion that such issue was not contemplated and that the grantor did not so intend is further supported by his subsequent conveyance to the issue of his third marriage of property shown to be valued at $141,000. This was accomplished by four separate conveyances to the four children of his third wife in August, 1900, after the death of both George and John Walter, Jr., when the grantor had full knowledge of the then situation of his family.

THIRD.

Appellee, William Walter, Clearly Entitled to Share in the Distribution.

The Court of Appeals found that William Walter, appellee here, is entitled to one-half of the proceeds in controversy as one of the two surviving children of John Walter, Sr., by his first wife.

None of the reasons for excluding other parties to the cause obtains in respect to this appellee or constrained the Court of Appeals to hold him excluded. He is a "surviving child" of John Walter, Sr., and was in being and presumably in contemplation at the time of the execu-

tion of the deed. The plain, unambiguous language of the deed is:

> "And it is further hereby witnessed that in the event of the death of any one of the above-mentioned children of the said John Walter, Senior, to wit, Catherine, George and Barbara, without leaving any child or children, then and in that case, that the property held in trust by said trustee, party of the second part, for the benefit of the party then dying without issue, *shall be sold by said party of the second part, after the death of John Walter, Senior, and the proceeds paid over in equal portions to the surviving children of said John Walter, Senior, party of the first part.* (Italics supplied.)

This appellee naturally falls within the class designated as distributees and can not be excluded without restraining the natural meaning of the words used. If the grantor intended to include such of his five existing children as should survive one or more of the three specifically named the language was apt and ample for the purpose. But the converse of this proposition is not true, and the court of original jurisdiction found it necessary to insert the word "said" before the word "surviving" or to substitute the word "survivors" for the words "surviving children of the said John Walter, Senior," in order to exclude appellee. Yet no authority has been cited and we assume that the industry of counsel has not discovered any authority to sustain a complete change of the unambiguous terms of a deed in order to accommodate a mere fancied intention on the part of the grantor, not arising out of the language used. Much latitude is indulged, in the construction of wills, to ascertain and declare the intent of the testator, but even in the construction of wills the law does not decide upon conjectures, but upon plain, reasonable, and certain

expressions of intention, found on the face of the will. 10 Wheat. (U. S.), 204, Wright *vs.* Page. An expressed intention in a will may serve to explain language afterwards used therein, but the intention must be found in the acts or dispositions of the testator, and not alone in any previously expressed purpose. See 98 U. S., 315, Blake *vs.* Hawkins.

Appellant, Mrs. Frosch, seeks to create ambiguity out of the grantor's recital, in the preamble of his deed, of a desire to make provision for "his children by his first wife, to wit," Catherine, George, and Barbara, but this recital can not be controlling because it is entirely consistent with the claim of appellee, the plain and natural meaning of the subsequent words employed, and the provision thereby made for the three children mentioned and their issue and descendants. Whatever may have been the unexpressed intention of the testator, if any contrary to his language, it is plain that he intended to limit the three children named to the income for life and to give the fee to their issue, if any, and their descendants. This result is accomplished without rejecting the ordinary and natural construction contended for by this appellee. This result answers the grantor's expressed wish to equalize the distribution of his property among his children and his own sense of equality of the distribution, when ascertained from the language he thought appropriate, must govern in the construction of the instrument, if any be required.

We believe that a complete answer to the complaint of injustice put forward by appellant, Mrs. Frosch, is contained in the closing language of the Court of Appeals in reversing the decree of the court below, which language is as follows:

> "If William Walter is to be denied the right to participate in this distribution, it means that

Catherine Frosch will get twice as much of her father's estate as her brother. It means that the children of Barbara King would get twice as much of the estate of their grandfather as the children of John Walter, Jr. Such reasoning is not in line with our interpretation, not only of the intention of the grantor, but of the express language of the deed itself."

Respectfully submitted.

ANDREW LIPSCOMB,
JAMES B. ARCHER,
JNO. LEWIS SMITH,
Attorneys for William Walter.

FROSCH v. WALTER.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 192. Argued March 17, 18, 1913.—Decided April 7, 1913.

A declaration in a deed of trust which clearly shows that the sole object of the instrument is to provide for certain specifically named children of the grantor who has other children, so dominates the instrument that the word "children" when thereafter used will be construed as referring to those particular children and not to include any other children of the grantor.

While the word "heirs" if used as a term of purchase in a will may signify whoever may be such at the testator's death, the word "children" as used in the deed involved in this case should be construed as including only those persons answering the description at the time of execution.

Surviving children of the grantor in such an instrument held to include children of one of the children specifically mentioned who had died prior to the grantor.

34 App. D. C. 338, reversed.

THE facts, which involve the construction of a deed conveying real estate in trust, are stated in the opinion.

Mr. Ralph P. Barnard, Mr. M. J. Colbert and *Mr. Benjamin F. Leighton*, with whom *Mr. Guy H. Johnson, Mr. H. T. Taggart* and *Mr. Oliver Metzerott* were on the brief, for appellants.

Mr. James B. Archer, with whom *Mr. Andrew Lipscomb* and *Mr. Jno. Lewis Smith* were on the brief, for appellee.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill in equity brought by Catharine Frosch against a trustee under a deed to compel him to transfer

to her or otherwise according to the construction of the instrument certain of the property conveyed by the deed. Other parties in interest are joined, and argument has been heard on their behalf. The facts are as follows: John Walter, the plaintiff's father, executed the deed on June 18, 1869. At that time his first wife had died leaving five children of whom the plaintiff is one, and he had married again.

Two of these children, John Walter, Junior, and William Walter, were of age. On the date mentioned their father gave them severally certain property in fee simple, and then made the deed before us, reciting therein that he was "desirous of making provision for his children by his first wife, to-wit: Catharine Magdalena Sophia Walter, [the plaintiff,] George N. Walter, and Mrs. Barbara King," these three then being under age. The final limitation is the one to be construed, but it will be understood better when the previous ones have been summed up.

The deed conveys to John Walter, Jr., certain parcels of land in trust, after certain contingent prior payments and after the death of the grantor, to hold the first named parcel and pay the rents and profits to the plaintiff for life and then to hold for the use of her children in fee. It similarly disposes of a bond for $10,000, given by John Walter, Jr., to his father as part consideration for the above mentioned gift to him, stating that it is "in order to equalize the division of my property between my said children." Then comes a gift of the second and third parcels upon like limitations and trusts for another daughter, Mrs. Barbara King, and also of secured notes for $7300, like the gift of the bond for Catharine, "in order more fully to equalize the division of his property, among his children." The fourth parcel is given upon similar trust for George N. Walter, the youngest son.

Then comes the doubtful clause. "In the event of the death of any one of the above-mentioned children of the

said John Walter, Senior, to-wit: Catherine, George & Barbara, without leaving any child or children or any issue of any child or children, then and in that case that the property held in trust by said Trustee, party of the second part, for the benefit of the party then dying without issue, shall be sold by said party of the second part, after the death of John Walter, Senior, and the proceeds paid over in equal portions to the surviving children of the said John Walter, Senior." John Walter, Senior, died on April 12, 1907. Before that date George had died in 1892 unmarried, and it is the disposition to be made of his share that is in question here. Barbara had died on August 23, 1904, leaving eight children, defendants herein, and John Walter, Jr., had died on November 17, 1906, leaving two children, defendants herein. William Walter, who with John had been provided for separately, survives and also is made a defendant. The grantor's second wife afterwards died, childless, and he married a third wife, who died leaving four children, also defendants in this suit. It may be remarked, if in any way material, that the grantor in 1900 provided for these last mentioned children by gifts similar to the above, subject like them to a life estate in himself.

To begin with the claim of the children of the third marriage, we are of opinion that it is unfounded. The word heirs if used as a term of purchase in a will, might be held to reach forward and to signify whoever might turn out to be such by the law in force and applicable at the testator's death. But this is a deed and the word is children. In view of what we have to say further, it is enough to state our opinion that the word as here used is confined to persons who answered the description at the moment when the deed was executed and spoke.

The Court of Appeals held that all persons were embraced who answered that description at that time, provided they survived the grantor, and directed a de-

cree in favor of the plaintiffs, Catharine and William Walter. 34 App. D. C. 338. But we take a different view. In the first place we are of opinion that the word children as used habitually in the deed means the three children for whom it declares at the outset that its object is to provide. That very declaration not only dominates the deed as a statement of the sole reason for the whole thing, but foreshadows the mode of referring to these three children in terms broad enough to signify all—'is desirous of making provisions for his children by his first wife'—a phrase only cut down by a 'to-wit: Catharine, George and Mrs. King.' When the grantor speaks of equalizing his property "between my said children" we understand him to refer to the three that have been mentioned together under that name. And we understand him to mean nothing different when later he speaks of equalizing the division of his property among his children. This interpretation perhaps is strengthened by the fact that 'my property' cannot properly include that which had been conveyed to his two elder sons and therefore that the equalizing contemplated was an equalizing as between the three children among whom his remaining property was divided by the present deed.

In the clause under consideration he shows whom he had meant by 'said children' when he says 'above mentioned children, . . . to-wit: Catharine, George and Barbara'—and when a few lines further on he says 'surviving children' the inference is strong that he means the children that up to that moment he had been talking about by that name throughout. It would seem that the grantor considered that he had made a division that would be fair as against the two elder children who had received their gifts in fee, if each of the three children and after them their descendants respectively received and retained the portion allotted to each. The groups set over against each other in his mind were the two adults

and the three minors. If one of the latter died without issue and his share went to the other two the equality was kept up because all of the three were equally subject to the chance, but assuming a substantial equality between the five lots the two adults being subject to no chance of loss had no claim to a chance of gain. It follows that William Walter is excluded, contrary to the decree of the Court of Appeals.

There remains the question whether children of Barbara King are entitled to share with Catharine as held by the Supreme Court. The Court of Appeals was of opinion that the interest of Barbara King was contingent upon her surviving the grantor, and that as she died before him her children could not take, the word children obviously being used in its proper sense and not embracing issue of such children, mentioned antithetically in the same sentence. It reached this conclusion because the direction to sell and distribute did not operate till after the death of the grantor and in its view the time of distribution determined the time of vesting an individual title in any child. On this point also we take a different view. The limitation over on the death of one of the three children without issue was of general import and scope, and was not confined to such a death before the grantor's. If George had died after his father instead of before the gift over still would have taken effect. Surviving children then means those of the three children who survive the child who dies without issue. The death of the child determines who shall take as surviving children. It is true that if that death happens before the grantor's the distribution is postponed, but that obviously is inserted to exclude any implication that in that event the grantor gives up the life estate that he has reserved throughout. It does not appear to us to warrant the conclusion that the time of the child's death with reference to this collateral fact was to affect the nature or quality of the interest given to the children

who survive. It is true that the gift is contained in the direction for distribution after sale, but in view of our opinion that it would have operated equally whenever George died, and that the reason of the postponement of distribution to after the grantor's death was solely on the grantor's own account, that fact cannot affect the result. The decree of the Court of Appeals is reversed and the original decree of the Supreme Court will be restored.

Decree reversed.

MR. JUSTICE PITNEY, concurring.

I concur in the result reached, and agree with the reasoning expressed in the opinion of the court except upon one point. The opinion states:

"The limitation over on the death of one of the three children without issue was of general import and scope, and was not confined to such a death before the grantor's. If George had died after his father, instead of before, the gift over still would have taken effect."

Upon this point I agree with the view expressed in the opinion of the Supreme Court of the District, that—"The equitable title to George's portion, subject to the life estate of John Walter, Sr., became vested in the complainant herein (Mrs. Frosch) and her sister, Barbara King, at George's death, May 14, 1892. Being so vested, Barbara's share passed by her death to her eight children; and William Walter, the children of John Walter, Jr., and the four children of the third wife, have no share in the said property."